

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 600. 276

INTERNATIONAL HARVESTER COMPANY OF AMERICA,
PLAINTIFF IN ERROR,

vs.

COMMONWEALTH OF KENTUCKY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

FILED JUNE 13, 1913.

(23,254.)

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d COMMONWEALTH OF KENTUCKY:

Court of Appeals.

Pleas before the Honorable the Court of Appeals of Kentucky, at the Capitol, at Frankfort, on the Sixteenth Day of March, 1912.

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Appellant,
vs.
THE COMMONWEALTH OF KENTUCKY, Appellee.

Be it remembered that heretofore, to-wit on the sixteenth day of October, 1911, the International Harvester Company by its counsel filed in the office of the Clerk of the Court of Appeals a transcript of record, which is in words and figures as follows, to wit:

1 Pleas before the Hon. Samuel E. Jones, Sole Judge of the Bullitt Circuit Court.

Be it remembered that on the 21st day of July, 1911, came Frank E. Daugherty, Commonwealth's Attorney for the 10th Judicial District of Kentucky and in the office of the Clerk of the Bullitt Circuit Court a petition in the name of the Commonwealth of Kentucky, Plaintiff against the International Harvester Company of America, Defendant, and afterwards the following proceedings were had.

Said petition is in words and figures as follows:

2 Bullitt Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

Petition.

The plaintiff, Commonwealth of Kentucky, says the defendant, International Harvester Company of America, is now and has been continuously for many years last past a corporation. It was incorporated under the laws of the State of Wisconsin and defendant has for many years continuously been engaged in business in this State and in Bullitt County, Kentucky.

Plaintiff says that in Bullitt County, Kentucky, the defendant within one year before the filing of this petition unlawfully and willfully entered into and became a member of a pool, trust combine, agreement confederation or understanding with the McCormick Harvester Company, The Deering Harvester Company, the Milwaukee Harvester Machine Company, the Champion Machine Company, the D. M. Osborne Company, the Plano Machine Company

some of above named companies are corporations and some stock companies but which are corporations and which joint stock companies plaintiff does not know, nor does it know who are the members of any of said joint stock companies nor does it know in what states or state those that are corporations are incorporated, for the purpose of regulating controlling and fixing the price of harvesting and farm machinery, reapers, rakes, binders, and repairs of same manufactured and produced or to be manufactured and produced by them and to enhance the cost of said articles above their real value.

Plaintiff says said defendant did in Bullitt County Kentucky within one year before the filing of this petition in pursuance of said unlawful pool, trust, combination, agreement confederation and understanding regulate control and fix the price of harvesting and farm machinery, reapers, mowers, rakes, binders and repairs of same manufactured by said defendant and by aforesaid joint stock companies and by aforesaid corporations and did enhance the price of same above their real value and did offer for sale and sell aforesaid machinery in Bullitt County Kentucky within one year before the filing of this petition at a price in excess of the real value of aforesaid machinery, and this was done unlawfully and willfully by said defendant and in pursuance of the unlawful pool, trust, combine, agreement, confederation and understanding hereinbefore set out. All in violation of the statutes in such cases made and provided, and by reason thereof defendant became indebted to plaintiff in the sum of Five Thousand Dollars.

Wherefore, plaintiff prays judgment against defendant in the sum of Five Thousand Dollars and its costs herein expended and for all proper relief.

FRANK E. DAUGHERTY,
Commonwealth's Attorney Tenth
Judicial District of Kentucky.

Jul. 21-1911 filed sums, & Copy issd. to Jefferson Co.

O. W. PEARL, Clerk,
By HUGO ROUSE, D. C.

(The following is the summons and the return thereon.)

Summons Ordinary.

THE COMMONWEALTH OF KENTUCKY:

To the Sheriff of Jefferson County:

You are commanded to summon International Harvester Company of America to answer, in twenty days after the service of this summons, a petition filed against them in the Bullitt Circuit Court by Commonwealth of Kentucky and warn them that upon their failure to answer, the petition will be taken for confessed, or they will be proceeded against for contempt and you will make due re-

turn of this summons within 20 days after the service thereof to the Clerk's office of said court.

Given under my hand, as Clerk of said Court, this 21st day of July, 1911.

O. W. PEARL, *Clerk*.
By HUGO ROUSE, *D. C.*

Return.

Came to hand July, 27-1911, at 10:30 a. m.

Executed July 27, 1911, on International Harvester Company of America by delivering a copy of the within summons to J. L. Gardner ass't Gen'l. agent of said company, he being chief officer found in this county at this time.

A. M. EMLER, *S. J. C.*
By CHAS. SCHUPP, *D. S.*

5 In Court on the 30th day of August the following order was entered and is in words and figures as follows:

COMMONWEALTH OF KENTUCKY Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

Came defendant and filed herein a demurrer to the petition of plaintiff, which demurrer is overruled to which defendant excepts.

Said demurrer filed by the foregoing order is in words and figures as follows:

Bullitt Circuit Court.

COMMONWEALTH OF KENTUCKY

vs.

INTERNATIONAL HARVESTER COMPANY OF AMERICA.

Demurrer.

The defendant, International Harvester Company of America demurs to the petition on information herein because the same does not state facts sufficient to constitute a cause of action against it or an offense against the laws of the state of Kentucky.

Not waiving the grounds of demurrer but expressly insisting thereon the defendant assigns as one ground of its demurrer herein that the act of May 20th, 1890, being chapter 101 Kentucky Statutes under which this proceeding or prosecution is instituted as set forth in the petition filed herein, must be taken considered and read in connection with the act approved March 21st 1906 entitled "An Act permitting persons to combine or pool their crops of wheat, tobacco and other products and sell the same as a whole and making contracts in pursuance thereof valid" and when read taken, or construed in connection with said act of March 21st,

1906, the said act of May, 20th, 1890 denies to it and to other persons within the state of Kentucky the equal protection of the law and is in violation of the Fourteenth Amendment of the Constitution of the United States and is void.

And this defendant assigns as further ground of demurrer herein that the said act of May 20th, 1890 as construed by the Court of Appeals of Kentucky fails to provide or establish any fixed standard or criterion by which to determine what was or is the real value of the articles and machinery herein alleged to have been sold by the defendant and is in violation of the said Fourteenth amendment of the Constitution of the United States in that it permits this defendant and other persons and corporations within this State to be deprived of their property without due process of law and is void.

FRANK P. STRAUS,
ARTHUR M. RUTLEDGE,

Attys for Deft.

Aug. 30th, 1911, filed in Court

At

O. W. PEARL, *Clerk.*

In Court on the 30th day of August, 1911, the following order was entered and is in words and figures as follows:

COMMONWEALTH OF KENTUCKY, Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

Came the Commonwealth's and County Attorney and the defendant by its counsel and to try came this Jury: Bluford
7 Crenshaw, W. P. Magruder, A. E. Funk, W. A. King, Thos.
Lloyd, C. O. Parrish, Joe C. Woodridge, H. S. Daugherty, R.
A. Miller, J. H. Nicholson, R. F. Davis and W. L. Jones, who were
accepted and sworn to well and truly try the issue joined and a true
verdict render and having a part of the evidence and there not being
time to conclude the trial on the present day, the jurors were al-
lowed to separate till tomorrow morning being first admonished by
the Court as required by law.

On August 31st the following order was entered in Court and is in
words and figures as follows:

COMMONWEALTH OF KENTUCKY, Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

Came again the parties hereto and the jury herein except R. A. Miller—

It appearing to the Court that R. A. Miller one of the Jurors engaged in the trial of this cause is sick and unable to serve on said jury and the defendant declining to proceed with said trial with the remaining eleven jurors, it is ordered that said Jury be discharged

from further consideration of this cause and that it be continued till the tenth day of the present term and then came W. G. Gardener, J. D. Hough, O. A. Lutes, B. M. Shepherd, M. F. Crenshaw, and T. C. Coleman witness- for plaintiff herein and each acknowledged himself indebted to the Commonwealth of Kentucky in the sum of One Hundred Dollars to be void as to each of whom shall appear in this court on the 10th day of its present term to testify as above set out and not depart without leave of Court.

The following are the subpoenas for plaintiff and are in words and figures as follows:

Commonwealth Subpoena for Plaintiff.

COMMONWEALTH OF KENTUCKY:

To the Sheriff of Bullitt County:

You are commanded to summon C. O. Parrish to appear before the Bullitt Circuit Court, on the 10th day of its present August term, to testify in behalf of the plaintiff in an action in said court, between the Commonwealth of Kentucky, Plaintiff, and International Harvester Co. of America defendant.

Given under my hand, as Clerk of the Court aforesaid, this 2nd day of Sept. 1911.

O. W. PEARL, Clerk,
By HUGO ROUSE, D. C.

The return on above summons is in words and figures as follows:
Executed Sept. 2nd 1911.

J. B. MYERS, S. B. C.,
By S. A. HORNBECK, D. S.

Commonwealth Subpoena for Plaintiff.

COMMONWEALTH OF KENTUCKY:

To the Sheriff of Nelson County:

We command you to summon W. D. Wooten to appear before the Bullitt Circuit Court, on the 2nd day of its next August Term, to testify in behalf of the plaintiff in an action in said court, between the Commonwealth of Kentucky, plaintiff, and International Harvester Co. Defendant.

Given under my hand, as Clerk of the Court aforesaid, this 27th day of July, 1911.

O. W. PEARL, Clerk.

The following is the return on the above subpoena and is in words and figures as follows:

8/4 1911. Executed the within summons upon the within named W. D. Wooten.

ED BELL, S. N. C.,
By R. L. MURPHY, D. S.

Commonwealth Subpoena, for Plaintiff.

COMMONWEALTH OF KENTUCKY:

To the Sheriff of Bullitt County:

You are commanded to summon Leroy Daniels, G. S. Patterson, S. C. Bridwell, E. A. Cochran, Bert Pope, Henry Hardaway, James Hough, J. W. Pope, S. B. Williams, Harry Combs, J. F. Collings to appear before the Bullitt Circuit Court on the 10th day of its August Term, to testify in behalf of the plaintiff, in an action in said court between the Commonwealth of Kentucky, Plaintiff, and International Harvester Co. of America, defendant.

Given under my hand, as Clerk of the Court aforesaid, this 31st day of August, 1911.

O. W. PEARL, *Clerk*,
By HUGO ROUSE, *D. C.*

Return.

Executed in full, Sept. 5th, 1911.

J. B. MYERS, *S. B. C.*,
By S. A. HORNBECK, *D. S.*

Commonwealth Subpoena, for Plaintiff.

COMMONWEALTH OF KENTUCKY:

To the Sheriff of Bullitt County:

You are commanded to summon Wilson Summers, Leonard Howlett, and Wm. Howlett, to appear before the Bullitt Circuit Court on the 10th day of its present August Term, to testify in behalf of the plaintiff, in an action in said court between the Commonwealth of Kentucky and International Harvester Co. of A. Defendant.

Given under my hand, as Clerk of the Court aforesaid this 2nd day of September, 1911.

O. W. PEARL, *Clerk*.

Return.

Sept. 6th, 1911. Executed in full.

J. B. MYERS, *S. B. C.*

Commonwealth Subpoena, for Plaintiff.

COMMONWEALTH OF KENTUCKY:

To the Sheriff of Marion County:

We command you to summon W. G. Gardner to appear before the Bullitt Circuit Court on the 2nd day of its next August Term, to

testify in behalf of the plaintiff in an action in said court between the Commonwealth of Kentucky, Plaintiff, and International Harvester Co. Defendant.

Given under my hand, as Clerk of the Court aforesaid, this 27th day of July, 1911.

O. W. PEARL, *Clerk.*

Return.

Executed by *summons* the within named party. This Aug. 4, 1911.

JOHN BURTON, S. M. C.,
By M. S. DOREN, D. C.

Commonwealth Subpoena, for Plaintiff.

COMMONWEALTH OF KENTUCKY:

To the Sheriff of Bullitt County:

We command you to summon Max Crenshaw to appear before the Bullitt Circuit Court, on the 2nd day of its next August Term, to testify in behalf of plaintiff in an action in said Court, between The Commonwealth of Kentucky plaintiff and International Harvester Co. defendant.

Given under my hand, as Clerk of the Court aforesaid, this 27th day of August, 1911.

O. W. PEARL, *Clerk.*

Return.

Executed Aug. 14th, 1911.

J. B. MYERS, S. B. C.,
By S. A. HORNBECK, D. C.

Commonwealth Subpoena for Defendant.

COMMONWEALTH OF KENTUCKY:

To the Sheriff of Bullitt County:

You are commanded to summon T. C. Coleman to appear before the Bullitt Circuit Court, on the 4th day of its Present August Term to testify of the plaintiff in an action in said court, between the Commonwealth of Kentucky plaintiff, and International Harvester Co. of America, defendant.

Given under my hand, as Clerk of the court aforesaid, this 31st day of August, 1911.

O. W. PEARL, *Clerk.*

Return.

Executed Aug. 31st, 1911.

J. B. MYERS, S. B. C.,
By S. A. HORNBECK, D. S.

On September 7th, 1911, the following order was entered and is in words and figures as follows:

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

12 This cause coming on to be heard and the parties announcing ready, the following jury was empaneled—Geo. Pendleton, Sim Harris, Lowell Hall, F. T. Arnold, Lem Swearingen, W. T. Shaw, John L. Quick, Albert King, O. P. Basham, Jas. Davis, Al Fisher, and J. M. Hill, who were accepted and sworn to well and truly try the issue joined and a true verdict render and having a part of the evidence and there not being time to conclude on the present day the jurors are allowed to separate till tomorrow morning being first admonished by the court as required by law.

On the 7th day of September, 1911, the following order was entered and is in words and figures as follows:

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

On motion of defendant it is ordered that Sam W. Eskew make a stenographic report of the oral evidence heard on the trial of this cause and by agreement he is appointed Official Stenographer pro tem, for the purpose of reporting this cause and by agreement his report when made is to be considered as the Official Stenographic report when transcribed the transcript is to be considered as the Official Transcript and may be used for all purposes as if taken by the regular Official Stenographer of the Bullitt Circuit Court Mrs. Mattie Glenn, who it appears to the Court is sick and unable to serve.

On September the 8th, 1911, the following order was entered and is in words and figures as follows:

13 COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

Came again the parties hereto and the jury herein and the trial having proceeded *the day* and there not being time to conclude the trial on the present day, the Jurors are allowed to separate till tomorrow morning being first admonished by the court as required by law.

On the 9th day of September, 1911, the following order was entered and is in words and figures as follows:

COMMONWEALTH OF KENTUCKY, Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

During the first argument in behalf of plaintiff the Commonwealth's Attorney said in the course of his argument to the jury "Everything used by the farmer is controlled by a trust even the casket in which he is buried." The defendant objected to said statement and the court sustained the objection, stopped the Commonwealth's Attorney and stated to the jury that said statement by the Commonwealth's Attorney was improper and not authorized by the evidence in this case and that the jury must disregard said statement and not be influenced by it, and admonished the Commonwealth's Attorney that said remark was improper. The Commonwealth's Attorney stated that he withdrew said remark.

Defendant moved the court to discharge the Jury because of said remark of the Commonwealth's Attorney objected to by it which motion the court overruled to which ruling the defendant excepts.

14 On the 9th day of September 1911, the following order was entered and is in words and figures as follows:

COMMONWEALTH OF KENTUCKY, Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

Came again the parties hereto and the jury herein and having heard all the evidence, instructions, of the court and argument of counsel, and having retired and deliberated returned the following verdict.

"We the jury find the defendant guilty and put the fine at \$5000.00 Five Thousand Dollars.

J. M. HILL,

Foreman of Jury.

Wherefore it is adjudged that the Commonwealth of Kentucky recover of the defendant, The International Harvester Company of America, the sum of (\$5,000.00) Five Thousand Dollars and its costs herein expended.

On September 9th, 1911, the following order was entered and is in words and figures as follows:

COMMONWEALTH OF KENTUCKY, Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

Came defendant and filed herein its motion and grounds and moved the court to set aside the verdict herein and judgment of the Court and grant it a new trial to which plaintiff- objects and

said motion being considered is overruled to which defendant excepts and prays an appeal to the Court of Appeals, which is granted. The motion filed by the foregoing order is in words and figures as follows:

15

Bullitt Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,

vs.

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

Motion.

The defendant moves the court to set aside the judgment rendered herein, and grant it a new trial, because the court erred:

First. In the formation of the jury to try this case, in excluding for cause two jurors, Vernon Jones, and J. H. Davis; said jurors one being a son-in-law and the other a brother-in-law of Judge Leroy Daniels, because the said Leroy Daniels was the agent of the defendant, selling machines in this county; to the order excluding these jurors the defendant at the time excepted and still excepts.

Second. The Court erred in not sustaining the defendant's motion for a peremptory instruction at the conclusion of the plaintiff's testimony.

Third. The court erred in refusing to sustain the motion of defendant for a peremptory instruction at the conclusion of all of the testimony in the case.

Fourth. The court erred in refusing to sustain defendant's motion to discharge the jury because of improper statements made by the Commonwealth's attorney, Frank E. Daugherty, in his argument to the Jury; said statements being fully set out in said motion.

Fifth. The court erred in refusing to give instructions A. and B. offered by defendant.

Sixth. The court erred in giving instructions 1, 2 and 3, on its own motion.

Seventh. Because the verdict of the jury is not sustained by sufficient testimony, and is contrary to the testimony and the law.

Eighth. The court erred in the admission of incompetent testimony, and erred in excluding competent testimony, offered by defendant, said rulings of the court are shown by the Official Stenographic report of the trial herein.

A. M. RUTLEDGE,

F. P. STRAUS,

Att'y- for Def't.

1911, Sept. 9th, filed in Court.

Att.:

O. W. PEARL, *Clerk.*

16

In Court on the 9th day of September, 1911, the following order was entered and is in words and figures as follows:

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

Came defendant and tendered its bill of exceptions which is examined and approved by the court and so endorsed by the Judge and ordered to be filed and made a part of the record herein without being spread at large upon the order book.

Said bill of exceptions filed by the foregoing order is in words and figures as follows:

Bullitt Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

Bill of Exceptions.

Be it remembered that upon the trial of this case the plaintiff, Commonwealth of Kentucky introduced and had sworn as witnesses, and who testified, the following named witnesses, to-wit: M. F. Crenshaw, W. Gregg Gardener, J. B. Myers, Bert Pope, J. W. Pope, E. A. Cochran, Leonard Howlett, who testified for the Commonwealth, and the testimony of said witnesses is fully set out in the Official Stenographic report of the trial of this case, and all objections and the rulings of the court, and the exceptions of all parties, are also set out in said stenographic report; the defendant introduced the following named witnesses, J. R. Gardener, John F. Steward, William Quiggins, B. P. Grigsby, Arthur Johnson, W. H. Ronayne, W. B. Swift, W. J. Garrard, T. A. Mattingly, Ed C. Tyler and read the depositions of B. C. Kennedy, and Wm. B. Edgar:

17 Said depositions are in words and figures as follows:

STATE OF KENTUCKY,
County of Bullitt, ss:

In the Circuit Court of Bullitt County.

COMMONWEALTH OF KENTUCKY
vs.
INTERNATIONAL HARVESTER COMPANY OF AMERICA.

The Deposition of Burr A. Kennedy, Taken on Saturday, August 26th, A. D. 1911, before James Abbott, Notary Public.

Deposition of Burr A. Kennedy, Taken on Interrogatories Hereto Annexed, on the 26th Day of August, A. D. 1911, at the Office of said James Abbott, at Room 516, 195 North Clark Street, in the City of Chicago, County of Cook, and State of Illinois, to be Read in Evidence on Behalf of the Defendant on the Trial of the Above Styled Cause.

BURR A. KENNEDY, being first duly sworn, answer said interrogatories as follows:

Interrogatory 1. State your name, residence and occupation.

Answer to Interrogatory 1. My name is Burr A. Kennedy, my residence is 813 Buenna Avenue, Chicago, Illinois; and my occupation is that of division manager and manager of manufacturing for the International Harvester Company.

Interrogatory 2. What are the duties of your position, state fully. How long have you held your present position?

Answer to Interrogatory 2. The duties of my position are
18 to give directions with reference to the employment of labor and with reference to the manufacture of the Company's products. I have held practically the same position since the company was organized in 1902.

Interrogatory 3. Do you know what farming machinery is now being sold, or has been sold or handled by the defendant, the International Harvester Company of America, in the State of Kentucky? If so please state.

Answer to Interrogatory 3. I only know in a general way what farming machinery is now or has been sold or handled by the International Harvester Company of America in Kentucky. I know that it sells in Kentucky harvesting and farm machinery that it purchases from the International Harvester Company.

Interrogatory 4. Do you know what material is used, or the kinds and character of material used in the construction or manufacture of the farming machinery referred to in the last above interrogatory? If so please state.

Answer to Interrogatory 4. Yes I know the kind and character of material used in the construction and manufacture of the harvesting and farm machinery sold in Kentucky by the International Harvester Company of America.

Interrogatory 5. Do you know either from your personal knowl-

edge, or from the records in your office, what the market value has been since and including the year 1902? If so please state. Has there been any advance or decline in the market price? Please state fully.

Answer to interrogatory 5. Yes, I know from personal knowledge and from records and papers in my office something
19 about the market value of the material used in the manufacture of the machinery referred to, but I cannot give the information in detail. I do know however, that there has been a substantial increase since 1902 in the price of all material that enters into the manufacture of harvesters and binders and mowers.

Interrogatory 6. Do you know anything in regard to the kind and character of labor used and employed in making or manufacturing the farming machinery sold by the defendant in the State of Kentucky, and the cost or price of such labor entering into the construction of such machinery? State fully. What opportunities have you had of acquainting or familiarizing yourself with the cost of the labor mentioned? Has the cost of such labor increased or declined since the year 1902, up to the present time, and if so to what extent? Please state fully.

Answer to Interrogatory 6. Yes I know the kind and character of labor employed in manufacturing farming machinery sold in Kentucky by the International Harvester Company of America that was manufactured by the International Harvester Company, and I also know that the cost of such labor entering into the construction of such machinery has increased from 1902 up to the present time more than 25%. There has been a steady increase from 1902 up to the present time.

Cross-interrogatories.

Interrogatory 1. State what position you have held with International -- Company of America (hereafter styled defendant) and how long you held each position, if you have held more than one, and at what place?

20 Answer to Interrogatory 1. I have never held any position with the International Harvester Company of America.

Interrogatory 2. How often have you been called on as a witness to testify on behalf of defendant, or any of its subsidiary or connecting companies or corporations?

Answer to Interrogatory 2. I have never until now been called on as a witness to testify on behalf of the International Harvester Company of America or any company supposed to be connected with it.

Interrogatory 3. State what relation exists between defendant and International Harvester Company.

Answer to Interrogatory 3. The only relation that I know of that exists between the International Harvester Company and the International Harvester Company of America is that of seller and purchaser. The latter company purchases the harvesting machinery manufactured by the former company, and sells it to the farmer.

Interrogatory 4. How many binders and mowers, of the following type were manufactured or controlled by it during the years 1908-9-10 and up to July 21st, 1911: McCormick Harvesting Company, the

Deering Harvester Company, the Milwaukee Harvester Machine Company, the Champion Machine Company, the D. M. Osborne Company, the Plano Machine Company.

Answer to Interrogatory 4 The defendant International Harvester Company of America has never manufactured any binders or mowers or anything else since 1902. I do not know how many it may have controlled that were purchased from the International Harvester Company.

Interrogatory 5. State the number of binders of each make separately for each year and the number of mowers of each make separately for each year, and state the number of each sold in Kentucky for the year above named.

21 Answer to Interrogatory 5. I do not know, and I am not in a position to know, either how many were manufactured or were sold in Kentucky.

Interrogatory 6. State the amount of wood used in each mower of the make mentioned in Cross Interrogatory No. 4, and the amount in each binder for the years mentioned in Cross Interrogatory No. 4 and the kind of wood and in what portion of the machine used and what was the cost of this character of wood during the years 1899-1900-1901 and up to August 1st, 1902.

Answer to Interrogatory 6. I do not know because I have not had time to consult the records and cannot do so within the time in which I am informed this deposition must be taken and filed.

Interrogatory 7. State the weight of each machine mentioned in Cross-Interrogatory No. 4, as sold and controlled by defendant for the years 1900-1910 and to July 21, 1911, in Kentucky and Bullitt County, Kentucky, exclusive of the wood used.

Answer to Interrogatory 7. I cannot give the weight of machines sold in Kentucky.

Interrogatory 8. State the amount of the kind of iron used in the constructing of the machines mentioned in Cross-Interrogatory No. 4 which were sold or controlled by defendant in Kentucky and Bullitt County, Kentucky during the years 1900-10 and to July 21, 1911, and if more than one kind of iron or steel was used, state specifically the amount of each kind of iron or steel used.

Answer to Interrogatory 8. I cannot state the amount or kind of iron used in constructing the machines that were sold in Kentucky during the years stated. If I were where I could have reference to the specifications I could state both the amount and kind
22 of iron used in the manufacture of binders and mowers which may possibly have been sold in Kentucky.

Interrogatory 9. State from what kind of Pig Iron the metal used in machines mentioned in Cross Interrogatory No. 4, were made. If the metal was made from different kinds of pig iron state how much of each kind was used in each machine mentioned in Cross Interrogatory No. 4.

Answer to Interrogatory 9. I cannot so state.

Interrogatory 10. State the price per ton of each of the various pig iron used in the manufacture of the metal in the machines mentioned in cross Interrogatory No. 4, during the years 1899-1900-1,

to August, 1902, and state the price of the same pig iron for the years 1908-9-10 and up to July 21st, 1911.

Answer to Interrogatory 10. I cannot so state, and I am not in position to obtain the information at this time.

Interrogatory 11. State whether the shops of defendant where machines mentioned in Cross Interrogatory No. 4, are manufactured are Union or Non-union shops.

Answer to Interrogatory 11. The defendant has no shops where machines are manufactured. Its only business is that of selling machines.

Interrogatory 12. State whether or not in those shops higher prices are paid for labor than in shops of similar character in other portions of the United States. If you answer yes, state in what branches of labor higher prices are paid & state how much higher those prices are, specifying each branch of labor. This question applies to the years 1908-9-10 and to July 21st, 1911.

Answer to Interrogatory 12. My answer to the last interrogatory would cover this. The defendant has no shops.

23 Interrogatory 13. State the various kinds of labor employed in the manufacture of machines mentioned in Cross-Interrogatory No. 4, and give the price paid by defendant for each class of labor separately for the years 1908-9-10 and to July 21st, 1911 and give the price paid for the same kind of labor during the years 1899-1900-1901 and to August, 1902.

Answer to Interrogatory 13. The defendant employed no labor in the manufacture of any machines at the times mentioned, or at any other time, since 1902.

Interrogatory 14. State whether or not those employed to make the machines mentioned in Cross Interrogatory No. 4, are employed all the year round and if not, state for what months of the year they are employed and if some are employed all the year and some only part of the time, state how many are employed all the year and what wages they receive and how many are employed only part of the year and what wages they receive, separating the classes and the wages paid each.

Answer to Interrogatory 14. As I have said, the defendant does not manufacture any machines or employ any labor for that purpose. I am not in a position at this time to further answer the question.

Interrogatory 15. State how many machines are made each day by defendant during the part of the year it is engaged in the manufacture of the machines mentioned in Cross Interrogatory No. 4.

Answer to Interrogatory 15. No machines are now or ever have been manufactured by the defendant since 1902.

Interrogatory 16. State what per cent of the cost of each of the machines mentioned in Cross Interrogatory No. 4, is the amount paid for labor in constructing same excluding cost of material.

24 Answer to Interrogatory 16. The International Harvester Company of America does not manufacture anything. I am not now in a position to further answer the question.

Interrogatory 17. What does it cost to manufacture each of the machines mentioned in Cross Interrogatory No. 4, in the quantities they are manufactured by defendant. In answering this question exclude the cost and commissions for selling same. Give the cost in dollars and cents.

Answer to Interrogatory 17. The same answer as to the last Interrogatory.

BURR A. KENNEDY.

STATE OF ILLINOIS,

County of Cook, ss:

I, James Abbott, a Notary Public within and for the state and county aforesaid, do hereby certify that the foregoing depositions of Burr A. Kennedy was taken before me at the time and place and for the purpose in the caption stated, pursuant to interrogatories hereto attached; that said witness was first duly sworn to tell the truth, the whole truth, and nothing but the truth; that said deposition was taken by me in shorthand, and the foregoing is a true and correct transcript of my notes; that neither party was present in person or by counsel; that said deposition was read over to and subscribed by the witness in my presence.

Witness my hand, this 26th day of August, A. D. 1911. My commission expires the 18th day of November, A. D. 1914.

JAMES ABBOTT

Notary Public, Cook County, Illinois.

25 STATE OF KENTUCKY,

County of Bullitt, ss:

In the Circuit Court of Bullitt County.

COMMONWEALTH OF KENTUCKY

VS.

INTERNATIONAL HARVESTER COMPANY OF AMERICA.

The Deposition of William B. Edgar, Taken on Friday, August 25th, 1911, at Chicago, Illinois Before Edward W. Austin, Notary Public.

Recd. by mail in an envelope properly endorsed and filed in office this the 26th day of August, 1911.

O. W. PEARL, *Clerk.*

By HUGO ROUSE, *D. C.*

26 Deposition of William B. Edgar, Taken on Interrogatories Hereto Annexed, on the 25th day of August, A. D. 1911, at Room 516 105 North Clark Street, in the City of Chicago, county of Cook and State of Illinois, to be read in evidence on behalf of the defendant on the trial of the above styled cause.

WILLIAM B. EDGAR, being first duly sworn, answer said interrogatories as follows:

Interrogatory 1. State your name, age, residence, and occupation.

Answer to Interrogatory 1. My name is William B. Edgar. My age is forty eight years. My residence is 1358 Kenwood Park Place, Chicago Illinois. My occupation is that of Assistant Manager of the purchasing Department of the International Harvester Company.

Interrogatory 2. What connection, if any, have you with the defendant, International Harvester Company of America? What are the duties of your position? State fully.

Answer to Interrogatory 2. I do not have any connection with the International Harvester Company of America.

Interrogatory 3. Do you know what farming machinery is sold or handled, or has been sold or handled by the defendant International Harvester Company of America, in the state of Kentucky? If so please state.

Answer to Interrogatory 3. I know that the International Harvester Company of America handles and sells farm machinery in Kentucky that is manufactured by the International Harvester Company and sold to the International Company of America. The International Harvester Company manufactures all the mowers, reapers, harvesters, and binders that are sold by the International Harvester Company of America, in Kentucky.

27 Interrogatory 4. Do you know what material is used, or the kind and character of material used in the construction of the farming machinery referred to in the last above interrogatory? If so, please state.

Answer to interrogatory 4. Yes, I know the kind and character of material used. The kind of material used is wood, iron, steel, canvas and leather. The character of it is such as has been in use by manufacturers of such machinery for a great many years.

Interrogatory 5. What experience, if any, have you had in purchasing raw material of the kind, quality and character mentioned in the last above interrogatory, and for what length of time?

Answer to interrogatory 5. I have had experience in purchasing such material since 1902.

Interrogatory 6. Do you know, either from your personal knowledge or from the records in your office, what the reasonable market value of such raw material has been since and including the year 1902? If so, please state. Has there been any advance or decline in the market price? State fully.

Answer to interrogatory 6. Yes, I know both from personal knowl-

edge and from the records of the Purchasing Department of the International Harvester Company what the reasonable market value of such raw material has been since and including the year 1902. The cost of lumber that enters into the manufacture of the harvesters and binders and mowers that have been sold in Kentucky advanced in price from 1902 to 1911 about twenty-three per cent. on pole stock; about thirty-three per cent on hard wood lumber and about eleven per cent on crating lumber. The cost of steel that goes into the construction of the harvesters and binders and mowers that are sold by the International Harvester Company of America, 28 in Kentucky has increased from 1902 until 1911 about twenty-two per cent. The cost of pig iron that enters into the construction of the same machines has increased in price from 1902 to 1911 about fourteen per cent. The cost of cotton duck that goes into the canvass used on harvesters and binders sold in Kentucky has increased from 1902 until 1911 about thirty eight per cent. The cost of leather straps on aprons of the harvesters and binders sold in Kentucky has increased from 1902 until 1911 about forty seven per cent. The International Harvester Company's use of straps of this kind on harvesters and binders amounts to about a half a million pounds annually and even in Kentucky it would not be a small item.

Interrogatory 7. Do you know any thing in regard to the character of the labor used and employed in making or manufacturing the farming machinery above mentioned, and the cost or price of such labor entering into the construction of such machinery? If so, state whether the cost of such labor has increased or declined since and including 1902, and the extent of such advance or decline. Please state fully, and if you cannot answer definitely the amount of such increase or decline in the cost of labor, then state approximately what it is or has been, if any increase or decline has occurred.

Answer to interrogatory 7. I only know that the cost of labor used and employed in the making or manufacturing of farm machinery such as we have been talking about has increased substantially since 1902 but I am not sufficiently advised to undertake to give the percentages of increase.

Cross-interrogatories.

Interrogatory 1. What connection has the International Harvester Company with the International Harvester Company of America?

29 Answer to Interrogatory 1. The International Harvester Company of America purchases from the International Harvester Company agricultural implements and machinery which it sells to the farmers.

Interrogatory 2. State who is president of each and as far as you know who are stockholders in each.

Answer to Interrogatory 2. Cyrus H. McCormick is president of the International Harvester Company and R. C. Haskins is president of the International Harvester Company of America, but I don't

know who are the stockholders in either of the companies aside from a small number of shares in the International Harvester Company.

Interrogatory 3. Is it not true that the International Harvester Company manufactures the binders and mowers sold and controlled by the International Harvester Company of America?—(Which Company will be hereafter for convenience styled defendant).

Answer to interrogatory 3. Yes, that is true.

Interrogatory 4. State how long you have been employed by defendant and in what capacity.

Answer to interrogatory 4. I have never been in the employ of the defendant, International Harvester Company of America.

Interrogatory 5. Were you ever employed by the International Harvester Company? If so, when and for what length of time and in what capacity?

Answer to interrogatory 5. Yes, I have been in the employ of the International Harvester Company since its organization in 1902 in the capacity of purchasing agent.

Interrogatory 6. Give the date of the incorporation of International Harvester Company and the date of incorporation of defendant.

Answer to interrogatory 6. The International Harvester Company was incorporated August 12th, 1902 and the International Harvester Company of America, which was first the Parker-Dennett Harvesting Machine Company (Limited) and subsequently the Milwaukee Harvester Company, was incorporated December 12th, 1881. Its name was changed to International Harvester Company of America, September 18th, 1902.

Interrogatory 7. Does not defendant sell and control the sale of McCormick reapers and mowers; Champion reapers and mowers; Deering reapers and mowers; Osborne reapers and mowers and Plano reapers and mowers, and did it not control them, and each, during the year prior to July 21st, 1911, in Kentucky and in Bullitt county, Kentucky. And if it did not control or sell each and all of the above named machines during the period mentioned, state what machines it did control and sell, and how long it has been controlling and selling them, if at all.

Answer to Interrogatory 7. Yes, the defendant sells and controls the sales of everything it purchases, including implements mentioned in your question, and did so during the time stated.

Interrogatory 8. State how many machines of the type or class mentioned did the defendant control or sell during the year immediately prior to July 21st, 1911 and state how many machines of each class it sold or controlled during the years 1908, 1909, 1910 and up to July 21st, 1911, in the United States, and give the number of each, make of machine and how many did it control and sell in foreign countries during the period of time above mentioned.

Answer to interrogatory 8. I do not know and don't have any means of knowing for the reason that I am not connected with the International Harvester Company of America, and don't know how many machines it purchases or sells.

31 Interrogatory 9. State how many feet of wood is used in each Champion Mower and binder sold or controlled by the defendant in Kentucky, in the year prior to July 21st, 1911, and how many feet in each Deering binder and mower; in each McCormick binder and mower; and in each Osborne binder and mower; and in each Plano binder and mower, sold in Kentucky during said period and give the amount of wood in the various sizes of binders and mowers.

Answer to Interrogatory 9. I don't know any thing about how many machines were sold in Kentucky at any time.

Interrogatory 10. State what character of wood is used for the tongue, for the double trees and the piston rod, and the number of feet in each.

Answer to interrogatory 10. The character of wood used for the tongue is yellow pine. The double trees are made out of hickory or hard wood of similar strength. There is no piston rod in the Harvesting machine that I ever heard of. The number of feet in a tongue or in double trees I don't know, for the reason that there are different sizes used on different types of machines.

Interrogatory 11. Give the price per hundred of the character of wood referred to in cross-interrogatory 9 for the year immediately prior to July 21st, 1911 and for the years 1908, 1909, and 1910.

Answer to Interrogatory 11. I cannot tell for the reason that I don't know what machines were covered by interrogatory 9. The market price of wood used in binders during the years 1908 to 1911 inclusive, are as follows:

	1908.	1909.	1910.	1911.
Pole stock	32.00	30.00	32.00	32.00
Hard Wood	36.00	35.50	35.00	34.00
Crating	10.50	10.50	10.25	10.00

32 Interrogatory 12. State what kind of iron or steel was used in each of the binders and mowers referred to in cross-interrogatory 7 which were sold and controlled by defendant in Kentucky and in Bullitt County, Kentucky, for the years immediately prior to July 21st, 1911, and what kind of iron or steel was used in each of the binders and mowers mentioned in cross-interrogatory 7, which were sold and controlled by defendant in Kentucky in the years 1908, 1909 and 1910, and state how many pounds of each character of iron was used in each machine. Be specific, not general.

Answer to interrogatory 12. I don't know what machines were sold in Kentucky during these years, but in the International Harvester Company's product is used pig iron (from which is manufactured grey iron castings and malleable castings) bar iron, Bessemer steel, open hearth steel and crucible steel. I cannot state how many pounds of each character of iron is used in each machine. A McCormick or Deering binder contains about 1273 separate parts. The knotter alone contains about fifty separate pieces.

Interrogatory 13. State the weight of each of the different kinds

and sizes of binders and mowers sold and controlled by the defendant in Kentucky and in Bullitt County, Kentucky, for the years prior to July 21st, 1911, excluding the wood in same. Be specific as to kind and size and give same information as to same machines sold in Kentucky for years 1908, 1909 and 1910.

Answer to Interrogatory 13. I cannot give the weight of the various machines sold in Kentucky for the reason that I don't know what was sold there, but a McCormick binder weighs about sixteen hundred pounds and a McCormick mower weighs about seven hundred pounds, and there is not much difference in the weight of the various makes of these machines.

Interrogatory 14. Is it not true that the metal used in the harvesters and binders controlled by defendant and sold in Kentucky in the year prior to July 21st, 1911, and in the years 1908, 1909 and 1910 is made from pig iron and if not made from pig iron state from what character of metal other than pig iron it is made.

Answer to Interrogatory 14. I have already answered this question stating the various kinds of material used in the International Harvester Company's machines in cross-interrogatory 12.

Interrogatory 15. State the grades and kinds of pig iron used in the manufacture of reapers and binders sold by defendant in Bullitt County for the years prior to July 21st, 1911, in Kentucky, during the years 1908, 1909, and 1910.

Answer to Interrogatory 15. If the machines sold in Kentucky were the same as those sold elsewhere, the grades are numbers 1, 2, 3, southern and northern foundry pig iron, malleable, Bessemer pig iron, and Standard Bessemer pig iron.

Interrogatory 16. Give the price per ton of the different grades and kinds of pig iron used in the manufacture of the machinery referred to in preceding question for the years 1899, 1900, 1901, and 1912, and for the years 1908, 1909, and 1910, and to July 21st, 1911.

Answer to Interrogatory 16. I don't know what grades and kind of pig iron were used prior to 1902, and I have already stated the grades and kinds that have been used since that time.

Interrogatory 17. Is Edward A. Bancroft the General Counsel of the International Harvester Company?

Answer to Interrogatory 17. Yes, I think he is.

Interrogatory 18. Is he also General Counsel of defendant International Harvester Company of America?

Answer to Interrogatory 18. I don't know and I am not in a position to know.

Interrogatory 19. Did he or not at a hearing before the Committee on Investigation of United States Steel Corporation on August 12th, 1911, file a statement of date August 10th, 1911 which by misprint is dated August 10th, 1910, and is not that report contained in pages 1748 to 1756, inclusive, in the report of testimony that committee of date August 12th, 1911.

Answer to Interrogatory 19. I don't know.

Interrogatory 20. Does Mr. Bancroft in said letter state: "In the

last seven years the International has purchased from the United States Steel Corporation only ten per cent of its total consumption, while it has purchased from competitors of the United States Steel Corporation during that time over thirty per cent per annum, the remainder being manufactured by the International's subsidiary, the Wisconsin Steel Co."

Answer to Interrogatory 20. I don't know and I have not seen the letter referred to.

Interrogatory 21. In your capacity as purchasing agent for defendant or for International Harvester Company would you not be in a position to know whether above statement is true?

Answer to Interrogatory 21. As Assistant Purchasing Agent for the International Harvester Company I might know about it and I might not.

Interrogatory 22. State from what companies other than United States Steel Corporation the defendant purchased for the years 1908, 1909, 1910 and up to July 21st. 1911, the material, exclusive of wood, used in the manufacture of its binders and reapers.

Answer to Interrogatory 22. It would not be possible for me to answer the question at this time. The question covers various grades of steel bars, steel shapes, steel sheets, steel plates, bolts, nuts, rivets, screws, washers, paints, oils, varnishes, dryers, cotton duck, cotton belting, leather straps, leather belting, buckles, malleable chains, steel chains and miscellaneous minor parts, that in the absence of detailed specifications, detailed material lists covering various machines as manufactured by the company's various plants I cannot recall from memory. Such materials have been purchased from more than one hundred different companies under contracts and open market purchases made at various times by the general office purchasing department, and by the assistant buyers located at the various plants of the Company throughout the United States.

Interrogatory 23. What connection has the Wisconsin Steel Co. with defendant or International Harvester Company of America?

Answer to Interrogatory 23. I don't know and I am not in a position to know.

Interrogatory 24. When and where was the Wisconsin Steel Company incorporated and who is its president and who are its chief stockholders, if you know.

Answer to Interrogatory 24. I know that H. F. Perkins is president of the Wisconsin Steel Company, but I don't know any of its stockholders, and I don't know where it was incorporated.

Interrogatory 25. What character of business does the Wisconsin Steel Company do? State fully and specifically.

Answer to Interrogatory 25. It manufactures the different kinds of steel product which I have referred to in my previous answers.

Interrogatory 26. State what it does with its manufactured products.

Answer to Interrogatory 26. I don't know what it does with all of its products, but I know that the International Harvester Company

purchases from it a considerable proportion of the product it manufactures.

Interrogatory 27. State if you know, what dividends were paid upon its stock for the years 1907, 1908, 1909, 1910 and 1911, 36 if any, and for any of those years if you don't know for all.

Answer to interrogatory 27. I don't know.

Interrogatory 28. State if you know, what is the surplus of the Wisconsin Steel Company and what are its undivided profits and whether its real estate contains mineral, and if so, what character of mineral?

Answer to Interrogatory 28. I don't know.

Interrogatory 29. State where each of the class of binders and mowers named in cross-interrogatory 7 was manufactured for the year prior to July 21st, 1911, and for the years 1908, 1909, and 1910, and where was each manufactured prior to August, 1902.

Answer to Interrogatory 29. The McCormick and Deering binders and mowers were manufactured for those years by the International Harvester Company on the premises that were formerly owned by the McCormick and Deering Companies, but I am not certain about all of them.

Interrogatory 30. If the place of manufacture of any of those machines has been changed since August, 1902, state what has been done with the plant which was used prior to the change. Be specific as to the various machines named and if some of the same kind of machine are manufactured at one place and some at another, state how many are manufactured at each.

Answer to Interrogatory 30. I am not in a position to know what changes have been made, but I do know that none of the plants have been closed, and that they are all being operated at the present time.

Interrogatory 31. State if you know how many men are employed in the manufacture of the machines named in cross-interrogatory 7, and what were their wages per hour for the years immediately prior to July 21st., 1911, and for each of the years 1908, 1909, 37 and 1910. If some were employed at piece work and some by the day. Give price paid for piece work and price paid per day and give price paid for the like character of work per hour or per day for each of the years 1889, 1900, 1901, and 1902.

Answer to Interrogatory 31. I don't know and I am not in a position to know.

Interrogatory 32. If piece work was not paid for by the hour, please state how it was paid for and give the wages of a piece worker, as requested in cross-interrogatory 31.

Answer to Interrogatory 32. I don't know. I don't have any connection with the Manufacturing Department aside from the business of the Purchasing Department.

Interrogatory 33. You are asked in direct interrogatory 6 to state from your personal knowledge or from the records in your office what the reasonable market value of the raw material used by the defendant has been since and including the year 1902. If you

refer to or use any records in your office, please state what records and file copies of same as part of this deposition.

Answer to Interrogatory 33. My answer to direct-interrogatory 6 is based very largely on my personal knowledge, and my memory has been refreshed by reference to a great many written contracts open market purchases and quotations of recognized trade Journals. Such information as we have in the Purchasing Department is made up of statistics that have been prepared and filed in the department from time to time, and these statistics are not kept in any book or books. We also have charts showing the fluctuations of the market during the various years.

Interrogatory 34. Do you, of your own personal knowledge, know anything of the character of binders or mowers sold in Bullitt county, Kentucky by defendant or controlled by the defendant for the year prior to July 21st, 1911? If so, state how you know.

Answer to Interrogatory 34. I don't know.

Interrogatory 35. Do you, of your own personal knowledge know anything of the character of binders or mowers sold in Bullitt county, Kentucky, and prior to August, 1902, by the companies now owned or controlled by the defendant? If you say you do, state how you know.

Answer to Interrogatory 35. I don't know.

WILLIAM B. EDGAR,

STATE OF ILLINOIS,

County of Cook, ss:

I, Edward W. Seig, a Notary Public within and for the state and county aforesaid, do hereby certify that the foregoing deposition of William B. Edgar was taken before me at the time and place and for the purpose in the caption stated, pursuant to interrogatories hereto attached; that said witness was first duly sworn to tell the truth, the whole truth and nothing but the truth; that said deposition was taken by me in shorthand, and the foregoing is a true and correct transcript of my notes; that neither party was present in person or by counsel; that said deposition was read over to and subscribed by the witness in my presence.

Witness my hand this 25th. day of August, A. D. 1911.

EDWARD W. SEIG,
Notary Public, Cook Co., Ill.

Aug. 26th. 1911.

Filed in office.

Att.:

O. W. PEARL, *Clerk*,
By HUGO ROUSE, *D. C.*

39 And in rebuttal, the Commonwealth of Kentucky introduced the following witnesses, T. C. Coleman, B. M. Shepherd, S. C. Bridwell, C. Q. Parrish; All of the testimony of said witnesses is fully set out in said Official Stenographic Report of this trial, and

the objections and the rulings of the Court, and the exceptions of all parties thereto, are also fully set out in said stenographic report, Said Official Stenographic Report is made a part of this Bill of Exceptions, and filed herewith as a part of same. At the conclusion of the testimony for plaintiff, defendant moved the court to instruct the jury to find the defendant not guilty; the plaintiff objected to said motion, and plaintiff's objection was sustained and the Court refused to sustain said motion to so instruct the jury, to which ruling of the Court the defendant excepted; and the defendant, at the conclusion of all of the testimony, renewed its motion to instruct the jury to find the defendant not guilty, to which plaintiff objected and the court sustained plaintiff's objection, and refused to so instruct the jury, to which ruling of the court defendant objected and excepted. Thereupon the Court instructed the jury, on its own motion as shown in instructions Nos. 1, 2 and 3 and are as follows:

No 1. The Court instructs the jury that if they believe from the evidence to the exclusion of a reasonable doubt that the defendant, the International Harvester Company of America, before the filing of the petition herein, entered into, or became a member of a pool, trust, combine, agreement, confederation, or understanding with the McCormick Harvesting Company, Deering Harvester Company, Milwaukee Machine Company, Champion Machine Company, the D. M. Osborne Company, the Plano Machine Company, or any of said companies, for the purpose of regulating, controlling, or fixing the price of harvesting or farm machinery, reapers, mowers, rakes, binders, or repairs of same, manufactured or produced or to be
 40 manufactured or produced by them or any of them, and that the purpose and effect of said pool, trust, combine, agreement, confederation, or understanding, if any, was to enhance the price of said harvesting or farm machinery, reapers, mowers, rakes, binders, or repairs of same, or any of them, above their real value; and if the jury further believe from the evidence beyond a reasonable doubt that the defendant company in pursuance of, or while a member of or party to or in any way interested in such pool, trust, combine, agreement, confederation, or understanding, in Bullitt County, and within one year before the filing of this petition, to-wit: one year before July 21st, 1911, and under substantially the same market conditions that existed before the advance, if any, in the price of said machinery, sold any harvesting or farm machinery reapers, mowers, rakes, binders, or repairs, of same, or entered into any contract with any agent which contemplated the sale of any of said harvesting or farming machinery, reapers, mowers, binders, rakes, or repairs for same at more than their real value, then in that event, the jury should find the defendant guilty, and fix its punishment at a fine of not less than Five hundred dollars (\$500.00) and not more than five Thousand Dollars (\$5000.00) in the discretion of the jury.

Given Sept. 9th, 1911.

No. 2. Although you may believe from the evidence to the exclusion of a reasonable doubt that the defendant entered into or

became a member of a pool, trust, or combine, as set out in instruction No. 1, and that in twelve months before July 21st, 1911, the defendant, while a member of such pool, trust, or combine sold some of the farming or harvesting implements or machinery mentioned in instruction No. 1, in Bullitt County, either itself or through its agents at a greater price than said machinery sold at before defendant became a member of such pool, trust, or combine, yet, if you believe from the evidence that the enhancement of the price of said machinery was due solely to the increased cost of labor or material, if any, in producing said machinery, you should find the defendant not guilty.

Given.

No. 3. If you have a reasonable doubt of the defendant having been proven to be guilty, you should find it not guilty.

Given.

The defendant objected and excepted to the giving of said instructions and each of them; and the defendant moved the court to instruct the jury as in instructions "A" and "B" which the court refused to do, upon objection by the Commonwealth to which ruling of the Court defendant excepted.

"A." The Court instructs the Jury that it was and is lawful for any persons or corporations to combine and pool their industries and the products of same, and to fix and regulate the prices charged for such products and unless the jury shall believe from the evidence to the exclusion of a reasonable doubt that the defendant, in Bullitt County, within twelve months before the filing of the petition herein, sold Binders, mowers, or hay rakes manufactured by the International Harvester Company, above the real value of such machines they shall find the defendant not guilty.

Refused. Sept. 8th. 1911.

"B." In determining the real value of the machines sold by the defendant the jury should consider the improved conditions of the machines if they believe from the evidence such improvements enhanced *its* real value.

Refused. Sept. 8th. 1911.

42 This was all the testimony heard by the jury, or offered by either party and all of the instructions offered by either part, and all of the instructions given by the court.

And the Court having examined this bill of exceptions, does now sign and approve same, and orders it to be filed, without being spread at large upon the order book.

SAM E. JONES,
Judge Bullitt Circuit Court.

On the 9th. day of September 1911, the following order was entered:

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

On motion of defendant it is ordered that Sam W. Eskew Official Stenographer Pro. Tem. in this cause make a complete transcript of the notes made by him on the trial of this cause and file same in the Clerk's Office of this Court to be used as a part of the Bill of exceptions herein.

On the 31st. day of August 1911, the following order was entered:

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

Came defendant by counsel and filed exceptions to certain questions and answers in the deposition of Wm. B. Edgar heretofore filed herein.

43 The exceptions filed by the foregoing order are in words and figures as follows:

Bullitt Circuit Court.

COMMONWEALTH OF KY.
vs.
INTERNATIONAL HARVESTER CO. OF AMERICA, Def't.

Exceptions to Certain Questions and Answers of the Deposition of Wm. B. Edgar.

19. Question 19 and answer thereto because the same is incompetent and irrelevant.

20. Question 20 and answer thereto because the same is incompetent and irrelevant.

21. Question 21 and answer thereto because the same is incompetent and irrelevant.

A. M. RUTLEDGE.

F. P. STRAUS.

1911, August 31st, filed in Court.

Att.:

O. W. PEARL, Clerk.

44 The following was filed with the testimony of O. W. Pearl on the 30th day of Aug., 1911.

CHICAGO, ILLINOIS, April 10, 1908.

To the Secretary of State, Frankfort, Kentucky.

SIR: I hereby give notice that the place of business for the International Harvester Company of America in Kentucky is located

at Louisville, Northwest corner of Thirteenth and Maple streets, and that F. M. Fisher, of Louisville, Kentucky, is our agent thereat upon whom process may be served in any suit that may be brought against our company within the state of Kentucky.

Done at Chicago, this 10th day of April, 1908.

CYRUS H. McCORMICK,

President.

Name of Corporation—International Harvester Company of America.

City or Town—Milwaukee.

State—Wisconsin.

Indorsed by the Secretary of State as follows:

Filed April 14th, 1908. Ben L. Bruner, Secretary of State.

Received by mail in a sealed envelope properly endorsed and filed in Office this 26th day of August, 1911.

Att.:

O. W. PEARL, *Clerk.*

45 COMMONWEALTH OF KENTUCKY.

Office of the Secretary of State:

Certificate.

I, Ben Bruner, Secretary of State for the Commonwealth of Kentucky, do certify that the foregoing writing has been carefully compared by me with the original record thereof, now in my official custody as Secretary of State and remaining on file in my office, and found to be a true and correct copy of statement filed by the International Harvester Company of America.

In witness whereof, I have hereunto set my hand.

Done at Frankfort this 23rd day of August, 1911.

BEN L. BRUNER,

Secretary of State.

By R. A. COOK,

Asst Secretary of State.

46 In Office on the 18th day of September, 1911, the following Supersedeas Bond was executed:

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Appellant,
against

COMMONWEALTH OF KENTUCKY, Appellee.

Upon an Appeal from a Judgment of the Bullitt Circuit Court,
Rendered 9th day of September, 1911.

Whereas, said Appellant International Harvester Company of America has taken an Appeal from the judgment of the Bullitt

Circuit Court, rendered at its August Term, 1911, against it in favor of the Appellee for the sum of (\$5000.00) Five Thousand Dollars and costs of this action and the appellant desires to supersede the whole of the said judgment above rendered.

Now, we, International Harvester Co. of America, Principal, The Bankers Surety Company, surety, do hereby covenant to and with the Appellee Commonwealth of Kentucky that the Appellant will pay to the Appellee all costs and damages that may be adjudged against the Appellant on the appeal, and also that they will satisfy and perform the Judgment above stated, in case it shall be affirmed, and any Judgment or Order which the Court of Appeals may render, or order to be rendered by the inferior Court, not exceeding in amount or value the Judgment aforesaid. (And also pay all rents, hire and damage, which during the pendency of the appeal may accrue on any part of the property of which the Appellee is kept out of possession, by reason of the appeal.)

Witness our hands, this 18th day of September, 1911.

INTERNATIONAL HARVESTER COMPANY
OF AMERICA.

By J. R. ZIMMERMAN, *Att'y.*
THE BANKERS SURETY CO.,
HARRY B. FITCH,

Attorney in Fact.

Att.:

O. W. PEARL,
Clerk C. B. C. C.

47 I, O. W. Pearl, Clerk of the Bullitt Circuit Court, certify that the foregoing 46 pages contain a true and complete transcript of the record in the case wherein the Commonwealth of Kentucky is plaintiff and the International Harvester Company of America is defendant, now pending in the Bullitt Circuit Court, as same appears from the records of my office.

Witness my hand, this 11th day of October, 1911.

O. W. PEARL,
Clerk Bullitt Circuit Court.

With the foregoing transcript there was filed the stenographer's transcript of evidence, which is in words and figures as follows, to-wit:

48 Bullitt Circuit Court.

COMMONWEALTH OF KENTUCKY, Plaintiff,
vs.
INTERNATIONAL HARVESTER COMPANY OF AMERICA, Defendant.

Transcript of Evidence.

Be it remembered that upon the trial of the above styled case, held at the Court House in Shepherdsville, Bullitt County, Kentucky, before the Hon. Samuel E. Jones, Judge Bullitt Circuit

Court, and a jury, on the 7th day of September, 1911, the following evidence was introduced and heard:

It was here agreed by parties to the above styled action that the defendant, International Harvester Company of America, is a corporation, incorporated under the laws of the State of Wisconsin, in September, 1902; that its principal place of business is Chicago, Illinois; that its name is International Harvester Company of America; that it does business in the State of Kentucky, and that it has been so doing business in the state of Kentucky continuously from September, 1902, up to the 21st day of July, 1911.

49 M. F. CRENSHAW, having been called as a witness on behalf of plaintiff, and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. CARROLL, of counsel for the plaintiff:

Q. Have you been sworn?

A. Yes sir.

Q. Please state your name to the Court and jury?

A. M. F. Crenshaw.

Q. Where do you live?

A. I live at Lakeland, Kentucky.

Q. Where were you born and raised?

A. In this county.

Q. Were you, at any time, in the employ of the International Harvester Company of America?

A. Yes, sir.

Q. When?

A. I worked sometime, from October first, 1902, to November, 1908.

Q. Prior to your being employed by the defendant, were you employed by any Machine Company in the State of Kentucky?

A. Yes, sir; I worked for the McCormick Harvesting Company.

Q. During what time?

A. From 1901; I think sometime in January or February, 1901, until October, 1902.

Q. Where did you work, and in what capacity?

50 A. I worked Jefferson, Bullitt, Hardin, Meade, Grayson, Washington, Nelson, and Spencer counties.

Q. In what capacity?

A. I was blockman.

Q. Please explain what a blockman was and is?

A. He looks after the territory; writes contracts, makes the contracts with the local agents; and routes the canvassers, and looks after putting up the machines, and work of that kind, and the making of settlements with the dealers, agents.

Q. What character of machinery did you handle, as blockman, for the McCormick Harvesting Company, in the territory you have named, and during the time you have named?

A. They had hay rakes, mowers, binders—corn binders and wheat binders and corn shredders.

Q. Did that Company appoint local agents in each of the counties you have named, for the purpose of disposing of its machinery?

A. Yes, sir.

Q. Did you have local agents in the county of Bullitt?

A. Yes, sir.

Q. Do you now know how many?

A. We only—I don't think we had but one in this county.

Q. What other companies, dealing in the same character of machinery, during the period you were blockman for the McCormick Harvesting Company?

51 A. There was the Deering, Champion, Milwaukee, and Plano.

Q. Was there an Osborne?

A. The Osborne was doing business part of the time, and part of the time they didn't work my territory; they didn't work my territory a few years.

Q. Was there, or not, competition between—what character of machinery did those companies you have mentioned sell?

A. They sold binders, mowers, hay rakes; both corn binders and wheat binders, and some of them sold shredders.

Q. They sold the same character of machinery the McCormick sold?

A. Yes, sir.

Q. Was there, or not, competition between those companies in the territory you have named, during the time you have named, and in Bullitt county?

A. Yes, sir; there was competition between all of the companies.

Q. Was that competition active or otherwise?

A. It got pretty active sometimes.

Q. During that period, were there ever any concessions made at times, between the companies, or by the companies to the purchasers or to the agents?

A. Sometimes there were.

Q. What would be the cause of those concessions?

A. Probably it would be on obsolete machines; last year's patterns, or something that had been carried over, or come damaged,
• and they would make concessions; on new machines there
52 were hardly ever any concessions.

Q. Was there ever any?

A. Once in a while.

Q. What caused that?

A. Probably there would be sharp competition.

Q. Where were the headquarters of the McCormick Company, the State headquarters, during the time you have mentioned?

A. On First Street, between Main and Market, Louisville.

Q. Of the other companies, during this time, if any had headquarters in the City of Louisville?

A. The Deering, Champion, Plano, and Milwaukee.

Q. Where were their headquarters?

A. The Deering had headquarters on Main Street, in the public Warehouse there, near Brook; the Champion was on Main Street, between First and Brook; the Plano was on Second Street; and the Milwaukee was transferred to Magnolia Warehouse, Thirteenth and Maple.

Q. Did the Osborne have headquarters there?

A. At Lexington.

Q. Did you have any employes under you, during the period you acted as blockman?

A. Yes, sir; I had some canvassers and experts.

Q. How many canvassers did you have regularly?

A. The year around, we generally kept one; probably two the year around; in the busy season, sometimes we had three or four or five.

Q. How long did the busy season last?

53 A. We generally put them on the first of March, and it would extend, probably to the first of September.

Q. Did the other companies you have named have canvassers and experts in the same territory?

A. Yes, sir.

Q. Do you know the number of them, about the number?

A. They had about the same number of men.

Q. How many sections, or blocks, in the State of Kentucky, did your company have, during that period, if you know?

A. I think the Louisville House of the McCormick Company had about ninety-three counties in Kentucky, and thirteen in Indiana.

Q. How many blocks?

A. That was divided up into five or six blocks.

Q. Did you know how many blocks those other companies had in the State, about how many?

A. They had, some of them, about the same; some of them were larger and some smaller.

Q. They employed about the same number of canvassers and experts?

A. Some of the companies did; some about the same number, and some more, and some less.

Q. Did you sever your connection with the McCormick Company in October, 1902, if so, tell the jury how you did it, and
54 what position you took?

A. In 1902, I worked for the McCormick Harvesting Company, the McCormick Division of the International Harvester Company of America.

Q. When was the change made?

A. I think it was made October first, 1902.

Q. How did you receive information of the change?

A. I was notified by the General Agent of the McCormick Harvesting Company.

Q. Were there any changes made in the other companies?

A. Yes, sir; they were all changed into divisions.

Q. Of what?

A. International Harvester Company of America.

Q. What companies were changed to division of the International Harvester Company of America?

A. The McCormick, Deering, Plano, Champion, and Milwaukee.

Q. The Osborne changed?

A. In 1905 or 1906.

Q. After this change was made, what became of the headquarters of the Companies you have named?

A. They retained their head-quarters until November first, 1903; then the head-quarters were all moved to the McCormick Head-quarters on First Street, between Main and Market.

Q. What became of the old head-quarters of the Plano, Milwaukee, Champion and Deering?

A. The Deering head-quarters was used as a storage ware-house; and the Champion, and the others, I don't know what become of them.

55 Q. They were abolished as head-quarters, were they?

A. Yes, sir.

Q. What became of those who were employed around those various head-quarters; I am not speaking of the blockmen and experts or canvassers?

A. The General Agents was given blocks, and the book keepers and other office force, some of them were retained and some were not.

Q. Do you know how many were retained, and how many were let out; about how many?

A. Well, I would say that five or six of them were retained; maybe more, and probably more.

Q. How many were let out; about how many?

A. I couldn't answer that question, as to the exact number that was let out; a good many were transferred, probably, some place else.

Q. What effect, if any, did this consolidation of the various companies you have named, have upon the competition in the territory you have mentioned?

A. It eliminated competition between the companies.

Q. Was there any further competition between the Companies in this territory?

A. No, sir.

Q. What became of the canvassers and experts of the various companies, employed in this territory?

A. Some of them was retained in this territory, and others were transferred probably, to some other places; and others were

56 let out.

Q. About how many were let out?

A. I couldn't tell you exactly, because I didn't know how many were employed.

Q. How many blockmen covered this territory, prior to the combination, representing those various companies you spoke of?

A. Between thirty and forty.

Q. I am confining myself to your territory, in your territory; the eight counties you were blockman in?

A. Prior to that, in the whole division, there was five blockmen.

Q. How many under the new arrangement?

A. One.

Q. What were those blockmen paid?

A. I couldn't tell you.

Q. About; you have an idea?

A. They run from seventy five dollars a month to one hundred and twenty-five.

Q. Is that exclusive of expenses?

A. Yes, sir.

Q. Were those blockmen employed the year around?

A. Yes, sir.

Q. About what were their expenses?

A. Their expenses run all the way from two to three and a half a day.

Q. How many canvassers were employed in that territory by the various companies, prior to this consolidation?

57 A. They used probably ten, twelve or fifteen.

Q. Each company you mean, or all together?

A. All together.

Q. How many were employed after the consolidation?

A. Somewhere from three to five.

Q. Three to five?

A. Yes, sir.

Q. About what were the canvassers paid?

A. They was paid from fifty to seventy-five dollars per month.

Q. Exclusive of expenses?

A. Yes, sir.

Q. About what were their expenses?

A. Their expenses run about the same.

Q. From two to three and a half dollars a day?

A. From two to four, somewhere.

Q. Were there any others employed during the extra seasons, than those canvassers and blockmen that were employed by the year, you have spoken of?

A. Yes, sir; during the busy season they had extra canvassers; no extra blockmen.

Q. About how many extra canvassers?

A. Sometimes they would double their force; more than double it.

Q. I am speaking now of before the consolidation?

A. That was before it.

Q. After the consolidation, how was it as to extra canvassers?

58 A. You mean the employ of the extra canvassers?

Q. Did they employ as many?

A. Yes, sir—

Q. The same number of extra canvassers after the combination?

A. No, sir.

Q. Did they, after the combination, employ as many extra canvassers during the busy season as was employed by the various companies before the consolidation, during the extra season?

A. No, sir.

Q. How many less were employed?

A. Something——

Q. Or, about how many?

A. There was one third less.

Q. You say the extra canvassers were on from about March, to September?

A. Yes, sir; sometimes they put them on January first. It all depends on the weather conditions.

Q. What were the extra canvassers paid, during the period they were employed?

A. All the way from fifty dollars to eighty-five dollars.

Q. Their expenses; what were their expenses, about?

A. Their expenses run from two to four dollars a day.

Q. About how much, in your territory, the eight counties you have mentioned, were the expenses lessened by reason of this combination, in the reduction of the force?

A. Something like seven or eight thousand dollars a year.

59 Q. After this consolidation was formed by those various companies, how was the machinery sold, were they listed to the agents—was it listed, the same character of machinery that is a mower of the McCormick type, Deering type, Plano type, McCormick Type, Osborne type, and the Milwaukee type, of the same size, all listed at the same price, or at different prices?

A. All listed at the same price.

Q. How was it as to the binders?

A. All the same price.

Q. How was it as to hay rakes?

A. All the same price.

Q. After this consolidation, was the price of the machinery mentioned, raised or lowered?

A. It was raised.

Q. How often?

A. It was raised three times from 1902 to 1908.

Q. When, or about, was the first raise?

A. 1903.

Q. When was the second raise?

A. I think, 1905.

Q. When was the third raise?

A. 1907, I think.

Q. What did those raises aggregate upon the mowers?

A. The mowers were raised, the three raises I think figured about nineteen per cent.

Q. Upon the binders?

A. Figured a little over twelve per cent.

60 Q. Upon Hay rakes?

A. Fourteen per cent.

Q. How, in dollars and cents, what was the raise, about?

A. The mower, six and a half dollars; hay rake two dollars; binder, fourteen or fourteen and a half dollars.

Q. Was there any reduction made for cash payment?

A. Yes, sir.

Q. What was the discount for cash payments?

A. The discount for cash was five per cent; or five and a half.

Q. On time payments, how were the payments arranged, and how were they secured?

A. They took the farmers' notes, for one, and two years; some of them three years.

Q. What time did they bear interest?

A. Bore interest from September first, generally; binders we sold for this harvest, the note would read, interest from September first, 1911.

Q. You say you left the International Harvester Company of America, the defendant, in 1908?

A. Yes, sir.

Q. Are you a stock-holder in that company now, or in the International Harvester Company?

A. I am in the International Harvester Company.

Q. How long have you been a stock-holder in that company?

A. I bought some stock in it, I think in 1904.

Q. How did you come to buy that stock?

61 Counsel for defendant objected to the foregoing question, and the court sustained the objection, to which counsel for plaintiff excepted.

Q. I will ask you if you bought stock in 1904, in the International Harvester Company at the suggestion or request of the General Agent of the International Harvester Company of America, in Kentucky?

Counsel for defendant objected to the foregoing question, but the court overruled the objection, to which counsel for defendant excepted.

A. I bought some stock in the International Harvester Company. I don't know whether it was in 1904 or 1905, somewhere along there. I don't know whether it was under the suggestion of the General Agent or not. We talked over it; several talked about buying stock, around the office. I don't know as he suggested it; I don't know.

Q. You talked around the office there, what office, the International Harvester Company of America?

Counsel for defendant moved the court to exclude the last answer of the witness from the consideration of the jury; and the Court sustained said motion, and admonished the jury not to consider the last answer at all; to which ruling of the court, counsel for plaintiff excepted.

A. (No answer.)

62 Q. In what business have you been engaged since that time?

A. Traveling for Fairbanks & Morse Company.

Q. Mr. Crenshaw, your business is such as to give you an opportunity of considering the market conditions, and the general condition of the country, is it not?

A. Yes, sir; in some things.

Q. Now, with reference to machinery, and matters of that kind, I will ask you to state whether or not the market conditions prevailing for the last two or three years, or up to July the 21st, 1911, and between July 22nd, 1910, and July 21st, 1911, have not been practically the same as the conditions existing prior, for a year or so prior to August 1902?

A. The market conditions of machines.

Q. Yes, and the general market conditions?

A. Well, the market conditions of machinery is that most of it has gone up.

Q. Between those periods?

A. Yes, sir.

Q. I am not speaking of the prices; I am speaking of the general conditions. Now, I will ask you if the market conditions have been practically the same between the period prior to 1902 for a year or so, and the period prior to July 21st, 1911, for a year or so?

A. The market conditions of machines.

Q. Yes, sir; the market conditions generally?

A. The market conditions have been; some of them have stayed the same and others have gone up.

63 Q. Have any gone down?

A. Not much.

Q. Well, would you say there was any marked difference between the conditions existing during the times I have mentioned?

A. Not in a lower condition. The prices have been elevated, most all of them.

Q. Mr. Crenshaw, were you acquainted with the market conditions prior to 1901, and up to August, 1902; and from July 21st, 1910, up to July 21st, 1911, and state whether or not the market conditions were about the same?

A. They were about the same, as far as I know.

Q. After this combination was made, Mr. Crenshaw, in October, 1902, state who made the contracts for those various machines in your territory?

A. I made the contracts with the local agents in my territory.

Q. For what machines?

A. Made them for the McCormick to November first, 1903, the McCormick division.

Q. The McCormick division?

A. Of the International Harvester Company of America.

Q. Who made the contracts for the others?

A. At that time they had a man for each division, making the contracts. After 1903, I made the contracts for all five of the machines.

Q. For what five machines?

64 A. Champion, Milwaukee, Plano, Osborne, McCormick, and the Deering.

Q. For whom did you make those contracts?

A. For the International Harvester Company of America. There was one there I didn't make, the Osborne.

Q. Did you make the contract for the Osborne?

A. No, sir; not at that time.

Q. When did you begin making for the Osborne?

A. 1905 or 1906; I couldn't say exactly.

Q. How were those various machines styled at that time?

A. I don't understand your question.

Q. How did you make the contracts for the various machines?

A. With the different agents in the territory, in which they were working. I would make a contract with one man for the Deering and with another for the McCormick.

Q. How would the Deering be styled?

A. It would be the Deering Machine; Agency for the Deering machine of the International Harvester Company of America.

Q. Wouldn't be agency for the Deering Division of the International Harvester Company of America?

A. Not after 1903.

Q. Just the Deering machine?

A. Yes, sir.

Q. How was it as to the McCormick, Plano, Osborne when it got in, and the Milwaukee and Champion?

A. It was the same kind; they were all wrote on the same contracts.

65 Q. Mr. Crenshaw, were there any changes made in the weight of those various machines, any of them?

A. Yes, sir; some of them.

Q. What machines?

A. I couldn't name them off-handed; I haven't handled them for some few years.

Q. Were any of the machines reduced in weight?

A. Yes, sir; some of them.

Q. Do you know what binders, and what reduction was made in the weight of any of the binders?

A. The McCormick was made a little bit lighter.

Q. About how much?

A. I couldn't state exactly, without referring to the weights of them.

Q. I am just asking you for your best recollection?

A. Probably it was made a hundred and fifty pounds lighter. That was the shipping weight; that might have been in the packing mostly; they cut the packing down on some of them, to make the shipping weight lighter.

Q. Did they make any changes in the crating?

A. That is what I mean; the shipping weight of the binders on the McCormick, and each of them, was made lighter; some of them were made heavier; they were equalized to some extent.

Q. What was done with the crating on the mowers?

A. Sometime later on, there was no crating put on the mowers;

they used to put them in boxes; but they cut out the box and tied them up with wire.

66 Q. Was there any reduction in the amount of leather used in the machines?

A. Yes, sir; some of them.

Q. To what extent, on the binders?

A. Probably it was made a little bit shorter; maybe some little buckles or something like that left out; different things.

Q. Do you know about how much that reduction was in the amount of leather?

A. No, sir.

Q. Was it reduced as much as fifty five per cent?

A. I never figured it out exactly.

Q. Have you no idea now, about how much?

A. No, sir.

Q. Mr. Crenshaw, do you know whether or not better material is used in the construction and production of those machines now than was before this combination?

A. No, sir.

Q. Do they use as good wood, or not as good wood?

A. Well, they don't use as hard a wood as they used to; they used to use ash several years ago, and now they use pine tongues.

Q. About how much wood is in a mower, how many feet?

A. Forty or fifty feet.

Q. In a mower?

A. Yes, sir.

Q. Where does that wood go in a mower?

67 A. In the tongue, and double trees, yoke, and pitman.

Q. Is the pitman made of wood?

A. Most of them; some of them are iron.

Q. How much wood is used in a binder?

A. Well, there is not so awful much more; probably twice as much; I am making a rough estimate.

Q. Is the same character of wood used as was formerly used, hard wood, or different wood?

A. They use tongues now made of pine; the other material is sugar tree, or something like that, in different places.

Q. Is that the same grade of wood as was used before the combination, the same character of wood?

A. They used to use some ash tongues, and some pine tongues before the combination.

Q. Did they use the sugar tree before the combination?

A. Yes, sir, they use that in making the elevator boxing.

Q. State whether or not in the binders, the weight is nearly three hundred pounds less than it was before the combination?

A. Some of them would probably weight that much less; some of them were made heavier; they were equalized.

Q. State whether or not there is less material used in the binder than there was before the combination?

A. Yes, sir; there is less material used in the binder than there was before the combination.

Q. Does that apply to the metal, or wood, or both?

A. Both.

Q. Which does it apply mostly to?

A. There is more metal than there is wood.

68 Q. Do you mean there was more of a decrease in the metal than in the wood?

A. No, there is more metal than wood.

Cross-examination.

By Mr. STRAUSS of counsel for defendant:

Q. As I understand you, you commenced working for the McCormick Machine Company in 1901?

A. Yes, sir.

Q. And you commenced work for the International Harvester Company of America in 1902?

A. Yes, sir.

Q. The International Harvester Company is a different organization from the International Harvester Company of America, isn't it?

A. The International Harvester Company, and the International Harvester Company of America, are two different organizations you mean—They are one organization. The International Harvester Company manufactures and The International Harvester Company of America is the sales agent; sells them.

Q. You don't know anything about the arrangements between the two?

A. I have got their annual report.

Q. Do you mean to say that the International Harvester Company of America takes the product of the International Harvester Company, and sells it?

69 A. Yes, sir.

Q. The International Harvester Company of America sells a great deal of product that is not manufactured by the International Harvester Company; a great line of machinery that is not manufactured by the International Harvester Company at all, don't it?

A. No, sir.

Q. They are a separate organization, are they not?

A. They make their report all in one; when they send me their report in April every year, it is all under one heading.

Q. Don't you know the Harvester Company is a manufacturing institution, and the International Harvester Company of America buys and sells machinery?

A. It is the sales department.

Q. It sells a great deal of product not manufactured by the International Harvester Company?

A. Yes, sir; it sells a good deal of product not manufactured by it.

Q. Therefore it is engaged in the selling business?

A. Yes, sir.

Q. And not exclusively the agent of the International Harvester Company?

A. No, sir.

Q. Say from 1902 until 1911, or 1908, put it first, hasn't there been a gradual advance in the price of labor, and material, and the cost of living, all around?

70 A. Yes, sir; generally.

Q. Just how much the advance was in the material, the actual material that went into these machines, you don't know, Mr. Crenshaw?

A. No, sir.

Q. Just exactly the amount of the advance in labor that went in those machines, you don't know?

A. No, sir.

Q. You know the general market conditions of the Country, that is all?

A. That is all.

Q. Even your own labor was advanced after you went into the International Harvester Company of America?

A. Yes, sir.

Q. I mean to say your own salary got an advance from the International Harvester Company of America?

A. Yes, sir.

Q. All of you men got an advance too?

A. Yes, sir; practically all of them.

Q. Because of the general market conditions of the Country, wasn't it, Mr. Crenshaw, the cost of living and so forth?

A. Yes, sir.

Q. While quite a number of employes were not used, yet the price of those retained was advanced, wasn't it?

A. Yes, sir; about everybody that was retained by the Company, their salary was advanced.

Q. Now, as to the weight of the machines; you don't know—take, for instance the McCormick machines, you don't know
71 what the mechanical reasons were in the manufacturing plant for the reduction in weight do you?

A. No, sir.

Q. To refresh your recollection, wasn't the weight decreased about seventy five pounds, I mean in the crating—or not the crating, but in the machine, itself?

A. I never had the machine out of the crate; we always get our shipping weights; that includes the crate.

Q. You never weighed the machine, itself?

A. No, sir.

Q. You don't know of your own knowledge, Mr. Crenshaw, whether or not it was changed to some extent to malleable iron, from casting, in the McCormick machine?

A. Yes, sir; they made changes in all of them, all the time.

Q. Don't those changes have—Isn't the purpose of those changes, and don't it accomplish that purpose, to make a lighter machine, and at the same time have a stronger and more efficient machine?

A. Yes, sir; that is their object.

Q. Hasn't that object pretty well been accomplished in the evolution of that machine?

A. Yes, sir; they have improved the machine all the time.

Q. The farmers get a better article in the machine than they got in 1902, taking all of the mechanical arrangements together, and its efficiency?

A. Some of them are better and some of them are worse.

Q. In your opinion they are worse?

A. Yes, sir.

72 Q. Take the Deering machine; you don't know so much about that as you do the McCormick—Hasn't the weight of that machine been increased about sixty pounds?

A. The shipping weight of the machine is heavier than it was.

Q. I am talking about the actual weight?

A. I don't know; The shipping weight is all I know about.

Q. Don't you know they had to increase the weight of the machine because in the old make some of its parts were too weak, and that they had to strengthen it up, and that increased the weight of that machine say sixty pounds, isn't that true?

A. Yes, sir.

Q. Mr. Crenshaw, from 1902 up to 1908, or 1911, I want to put it, hasn't farm products and farm labor all advanced?

A. What little dealing I have had with it, I have found it to be advanced.

Q. Hasn't the cost of living increased more than thirty-three per cent during that time?

A. Yes, sir; the cost of living has increased.

Q. From your knowledge and experience you have had in the employment of labor; you have had laborers under you, in your employment; isn't that a powerful factor, and hasn't it been, in the advance of the wages or labor?

Q. Yes, sir; it cost a man more to live, and people have to have more money to live now.

73 Redirect examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Mr. Crenshaw, you say your wages were increased after you became blockman for the International Harvester Company of America?

A. Yes, sir.

Q. You were doing the work that five blockmen did prior to that time weren't you?

A. Yes, sir.

Q. Did that have anything to do with it?

A. My work was increased and the salary come.

Q. Mr. Crenshaw, isn't it a fact that since 1907, that the prices of things has been going down, and isn't it a fact for the last year prior to July 21st, 1911, that farm products have been going down?

A. I hav-n't sold any; I don't know.

Q. Don't know anything about that?

A. No, sir.

Q. Don't know whether the prices have gone up or down?

A. (No answer.)

Q. Do you know whether the prices on this character of machinery has gone down or been cut?

A. Yes, sir; some of it has; some of the machinery has been reduced.

Q. In what period; since 1907?

A. Yes sir; since 1907, or 1906; like that.

Q. How much was it reduced?

A. Some machinery has been reduced something like ten per cent; and some five, and others have been raised.

Q. Have any been reduced as much as twenty or thirty per cent?

A. No, some of it has been reduced fifteen per cent.

Q. During the period after this combination was formed?

A. Yes, sir.

Q. That is on some make of machinery?

A. Yes, sir.

Q. Now then, the canvassers who were retained by the International Harvester Company of America whose wages were raised, were given additional work, weren't they?

A. No, they work about the same; of course they are working a little bit more territory, probably.

Q. There was no competition after that, was there?

Counsel for defendant objected to the foregoing question, but the Court overruled the objection, to which counsel for defendant excepted.

A. There was competition between the agents and canvassers, little.

Q. The competition between the agents was a question as to whether the agent should receive more or less profit, on their sale, wasn't it?

Counsel for defendant objected to the question, and the Court sustained the objection, and counsel for plaintiff withdrew the question.

75 Recross-examination.

By Mr. STRAUS, of counsel for defendant:

Q. Mr. Crenshaw, I believe you sell some machinery now?

A. Yes, sir; Fairbanks & Morse Company.

Q. Is that machinery in competition with any machinery sold by the International Harvester Company of America?

A. Some of it is. We have Gasoline Engines, is about all we come in competition with them on.

Q. In this territory, at the time you mentioned you were block-man, there was also the Walter A. Wood being sold in the territory?

A. Yes, sir; Walter A. Wood had some agents around in the territory.

Q. The Johnson machine had some?

A. Not while I was here, I don't recall it.

Q. Hav-n't they now?

A. Yes, sir.

Q. The Johnson and the Walter A. Wood both?

A. Yes, sir.

Q. And the Acme?

A. Yes, sir.

Q. They have been in competition with the machines sold by the International Harvester Company of America, and are now?

A. I think so; I am not in the harvesting line, but I see some of those machines you mentioned in my territory as I go around.

Q. Don't you know that the John Deer Manufacturing Company have mowers in this territory in competition?

76 A. Yes, sir.

Q. The Thomas Manufacturing Company have mowers?

A. Yes, sir.

Q. The Emmerson Manufacturing Company?

A. Yes, sir.

Q. All have mowers in this territory in competition with this Company?

A. Yes, sir.

Q. In 1902, and prior thereto, Mr. Crenshaw, there was considerable complaint of the farmers about the heavy draft of the McCormick machine, and had been for years?

A. Yes, sir.

Q. And the reduction in weight, to some extent, eliminated that, didn't it?

A. Yes, sir; they made the draft lighter on that machine than they used to.

Q. It produced more satisfaction to the farmer, didn't it?

A. Yes, sir.

Q. Can you say now, from your own recollection now, Mr. Crenshaw, whether or not in 1902, the long leaf yellow Pine of Georgia, is considered hard wood, which is considered a hard wood, was used by the companies for the pole stock in those machines?

A. Used in 1902?

Q. Yes, sir; and before?

A. They used it in 1902; and probably used it before that.

Q. That is known as the long leaf Yellow Pine?

A. I don't know what quality of pine it is.

77 Q. It is considered a hard pine wood?

A. Yes, sir.

Q. Really in 1902, Mr. Crenshaw, to refresh your recollection, don't you know that the ash business had played out, as a timber in those machines?

A. They took the ash out of the machines sometimes; I don't know the exact date.

Q. Whether it was prior or afterwards, you can't say?

A. No, sir.

Redirect examination #2.

By Mr. CARROLL, of counsel for plaintiff:

Q. Did they use Hemlock Pine, prior to 1902?

A. I don't know what kind of pine that is.

Q. You don't know what that is?

A. No, sir.

Q. Did they use it after 1902; well if you don't know what it is, you don't know. Mr. Crenshaw what per cent of the business did the McCormick, Osborne, Plano, Champion, Deering, and Milwaukee do in the territory in which you operated prior to 1902, and prior to the combination, or about what per cent of the business?

A. Well, they did; I guess about seventy five or eighty per cent.

Mr. STRAUS: We object to any guessing.

The COURT: Sustain the objection.

78 Q. When you use the word "guess", you mean your opinion from your observation and experience?

A. Yes, sir.

Q. How much business in that territory did the Combination do after it was formed; about what per cent?

A. About the same per cent.

Recross-examination #2.

By Mr. STRAUS, of counsel for defendant:

Q. Notwithstanding the competition of the Wood, Johnson, Acme, and other machines, it still don't do any more business than they did before, do they?

A. Not much more.

Q. When you said you did the work of five blockmen, Mr. Crenshaw, your territory then was cut down, wasn't it?

A. No, sir; my territory was only cut down one county, of what it originally was.

Q. But while there were less blockmen, they really had to have the same amount of canvassers in the busy season?

A. No, not quite; didn't use quite as many.

Q. After this change the men were kept, or more men were kept on a permanent salary?

A. Yes, sir.

Q. Quite a number of the people you spoke of being employed before the combination were only hired for the season rush?

A. Yes, sir.

79 Q. And let go then?

A. Yes, sir.

Q. But, afterwards, these men were employed by the year, most of them?

A. Most all of the men in later years were employed by the year.

Redirect examination #3.

By Mr. CARROLL, of counsel for plaintiff:

Q. You mean all the men that were employed in the later years, were employed by the year?

A. Yes, sir.

(And further the witness sayeth not.)

W. G. GARDENER, having been called as a witness on behalf of the plaintiff, and having been first duly sworn, and being examined, testified as follows, to-wit:

Direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Have you been sworn?

A. Yes, sir.

Q. State your name, please?

A. W. G. Gardener.

Q. Where do you live?

80 A. Lebanon, Kentucky.

Q. Where were you born and raised?

A. Born and raised in Nelson County.

Q. What part of Nelson County?

A. Eastern part; near Fairfield, Kentucky.

Q. How old are you?

A. About fifty years of age.

Q. Mr. Gardener, were you ever employed in any capacity by the International Harvester Company of America?

A. Yes, sir; I was.

Q. Now, when did your employment begin, and when did it cease?

A. Well my employment, as well as I remember, began at the time the International Harvester Company was formed, and ceased, as well as I remember 1904, in the Fall.

Q. Prior to the time your employment by the International Harvester Company of America, in what business were you engaged?

A. Prior to my employment by the International Harvester Company of America?

Q. Yes, sir?

A. I was in the employ of the Champion Harvester Company.

Q. In what capacity were you employed by the Champion Harvester Company?

A. Commencing about the year 1900, I think, until sometime during the year 1902, as blockman for the Champion Company; and then from sometime in the year 1902, to the formation of the International Harvester Company, I was State Manager for the Champion division of the International Harvester Company of America.

81 Q. In what territory were you blockman for the Champion Company, prior to your employment by the International Harvester Company of America?

A. When I first commenced as blockman, my head-quarters was at Bowling Green, Kentucky, and I took in the western part of the state, that section of the state down there; and afterwards I made head-quarters at Louisville, and my territory embraced the section of the country between here and the Tennessee line, and east of here.

Q. Did your territory embrace Bullitt county?

A. Yes, sir; I think it did. Yes, sir.

Q. During the time you were blockman for the Champion Company, with what companies, if any, did you come in competition?

A. I came in competition with the McCormick, Deering, Milwaukee, Osborne, to a limited extent, and also the Plano to a certain extent.

Q. What character of machinery was the Champion Company manufacturing and selling in the territory in which you represented them as Blockman?

A. Principally binders, mowers, hay rakes; possibly tedders; principally those I named.

Q. What character of machinery were the companies you have named selling?

A. Well, I think principally the same kind of machinery, some of them possibly had some few more.

82 Q. What per cent, or about what per cent of the business did these various companies altogether do, in the territory in which you were Blockman?

A. Well; you mean what proportion?

Q. What per cent of the business all together did they do?

A. I couldn't state positively; quite a large per cent of the business.

Q. About what per cent?

A. I couldn't state; I don't know.

Q. They did a large per cent of it?

A. Yes, sir.

Counsel for defendant objected to the foregoing question and answer, and the court sustained the objection.

Q. Was or not, there any competition between these companies?

A. Yes, sir; the Walter A. Wood Company was represented on the territory to some extent.

Q. Some extent?

A. Yes, sir, and possibly the Johnson machine; and I think possibly it was represented in some parts of the territory, as well as I remember.

Q. Was there any competition during the period you have named in the territory mentioned, in which you were Blockman, between the Champion, Deering, McCormick, and Plano, and Milwaukee?

A. Yes, sir; very considerable competition.

83 Q. Was that competition strong or otherwise?

A. Very strong.

Q. Did, or not, that competition result in concessions being made to the purchasers and agents, by those companies?

A. Yes, sir; I think it did.

Q. You say you think it did?

A. I know it did; yes, sir; it resulted in that being done.

Q. When did you become State Agent of the Champion?

A. Sometime during the year 1902, I think probably along in August, or maybe latter part of July.

Q. How long did you so continue?

A. Continued until the formation of this combination.

Q. When was that, if you remember?

A. As well as I remember it was in the Fall of 1902.

Q. What did you do after that?

A. Then I accepted employment under the—In the Champion Division of the International Harvester Company; In fact, the International Harvester Company.

Q. International Harvester Company, or the International Harvester Company of America?

A. I stated the other day here to the court that it was the International Harvester Company; I say now I don't know what it was; I suppose it was the International Harvester Company of America.

Q. That is your best recollection now?

A. Yes, sir.

84 Q. What were your duties as Blockman of the International Harvester Company of America?

A. My duties in a general way, were to make contracts and settlements, and attend to the general business as it came up, to a certain extent under the State Manager, I mean his direction and advice, and so on.

Q. What territory did you have?

A. As well as I remember now, I had the counties of Bullitt, Spencer, Nelson, Washington, Marion, and possibly Taylor, I don't remember.

Q. Did you succeed, Mr. M. F. Crenshaw, or he succeed you as blockman?

A. He succeeded me, I think.

Q. The territory which you had as Blockman, did it embrace Bullitt county?

A. Yes, sir; I think it did; Yes, sir.

Q. What other machine did you represent as Blockman, or make contracts for, except the Champion?

A. As Blockman for the International?

Q. Yes, sir.

A. I made of—I made for all of them where they had not been made.

Q. Name the companies?

A. I made them for the—

Mr. STRAUS: Made what?

A. (Con.) I made contracts for the Deering, McCormick, Champion, Milwaukee, and Plano.

85 Q. Did any of those companies you have named, after this combination was formed have any representatives, agents, canvassers, or Blockmen, in this territory?

A. Well, I don't know that they had any Blockmen, but they had other men going over the territory at certain times, and they had canvassers during the selling season.

Q. Now, did those companies——

A. You mean these companies I have named?

Q. Yes, sir?

A. They did, to some extent; there were other men sometimes would come out on the territory from the office, to assist me.

Q. From what office?

A. The Louisville office.

Q. Louisville office of what?

A. This company we are speaking of.

Q. What company?

A. International.

Q. Did any agent, canvasser, or blockman come from any of the offices of those other companies——

A. You mean from the competitors?

Q. (Con.) and canvass in the district of which you were Blockman?

A. I have answered the question according to my understanding of it.

Q. Now, Mr. Gardener, state whether or not any of those companies, after this combination had separate agents, blockmen, or canvassers?

86 A. They had separate agents, you mean?

Q. Yes, did they?

A. In the same territory?

Q. Yes, sir.

A. No, sir; I think not.

Q. Have any in your territory?

A. Well, except now, they might have been at some places where I was in; they might have sent out somebody to assist me.

Q. Who sent them out?

A. The General Manager, in the City of Louisville.

Q. Of the International Harvester Company of America?

A. Yes, sir.

Q. Did any agent of the Plano Company come out, or any agent of the Deering Company?

A. Not specially in the interest of that company?

Q. What company were they in the interest of?

A. In the interest of the International Harvester Company of America.

Q. Is it, or not, true that after this combination was formed, all of those companies became a part of the International Harvester Company of America?

A. Yes, sir.

Q. Now I will ask you again, if any of those companies, after this combination was formed, sent out any agent, canvassers, or Blockmen in the territory in which you represented the International Harvester Company of America or did any agents of those companies, except as representing the International Harvester Company of America, appear in that territory?

87

A. Only in way I told you of; they were taken out to assist on some special trip.

Q. Did they, or not come out as the representative of the International Harvester Company of America?

A. Yes, sir.

Q. And not as the representatives of any of those separate companies, as a division of the International Harvester Company of America?

A. I don't understand you.

Mr. CARROLL: Mr. Stenographer, read the question.

Mr. STRAUS: We object.

The COURT: Overrule the objection.

(Question read to witness by stenographer.)

Q. Is that correct or not?

A. They came out as I understand it, representing the same Company I did, namely, the International Harvester Company of America.

Q. Now Mr. Gardener, after this combination was formed, what per cent of the business in that territory did those or this combination do, or about what per cent?

A. Well, they did a very large per cent of it; but, of course, I would not be able to state under oath, the exact per cent they did.

88 Q. Were the number of Blockmen in that territory reduced?

A. Well, I would suppose they were.

Q. Do you know whether they were or not; what Blockmen did you meet outside of your-self in that territory; what Blockmen after the combination, worked that territory outside of your self?

A. Practically no one except my self?

Q. Were the number of canvassers and experts reduced?

A. It is possible they were; of course, I couldn't state specifically.

Q. When you say you think they were; what is your thinking based upon, your knowledge?

A. Rather a general observation of the number of men I remember to have been employed previous to that time, and the number of men I remember to have seen employed after that time.

Q. Was the reduction great or small?

A. There was a reduction, I think, I would say, I think there was a reduction; Of course, I couldn't be able to state exactly what it was.

Q. Before this combination, how many men had the Champion Company employed on this district?

A. You mean as blockmen?

Q. Yes, say Blockmen first, before the combination?

A. As well as I remember, at the time that this thing went into effect, I believe four; I think sometime previous they had five; one of those men, however, worked in Indiana, worked across the river.

89 Q. I am speaking of your territory, when you were blockman of the Champion, what other blockmen worked in your territory?

A. Yes, sir; I met all of the blockmen representing the various companies.

Q. I am asking you—You were the only blockman for your company?

A. Yes, sir.

Q. How many canvassers did they have in that territory, about how many?

A. As well as I remember, during the selling season three or four; maybe, three or four.

Q. How many did they have regularly?

A. They didn't employ canvassers regularly at that time.

Q. Did they employ any other men regularly, in that time except the Blockmen?

A. Not particularly, except in the selling season, they employed experts to set up the binders.

Q. How many did they employ in that territory, or about how many?

A. Possibly maybe three, four or five.

Q. How many did the McCormick employ? Did they have a Blockman in that territory?

A. I don't know that the McCormick territory was exactly with ours; they had a man representing that territory.

Q. Did they have any canvassers, and extra men, experts in that territory?

A. I think they did.

90 Q. Don't you know?

A. Yes, sir; I know it.

Q. Those other machine Companies, did they — experts, Blockman, and Canvassers in that territory?

A. Yes, sir.

Q. How much was that force reduced, after the combination?

Counsel for defendant objected to the manner in which the foregoing question was asked, and the court sustained the objection.

A. (No answer.)

Q. Well was the force reduced in that territory?

A. I can only answer that in a general way.

Q. Answer it in a general way?

A. According to my opinion, I suppose so.

Q. Was the number of Blockmen reduced?

A. Yes, sir; I think the number——

Q. Number of canvassers reduced?

A. I think they were.

Q. Do you know to what extent, about?

A. I couldn't state exactly; I can give you a better idea as to the Blockmen.

Q. Well give your idea as to the Blockmen?

A. As I told you, previous to this formation, we were out four blockmen, that is we were using four blockmen in the State of Kentucky, in the territory we had in Kentucky, it didn't include all of the State of Kentucky, and it included some immediately over

the river in Indiana; we used four blockmen in the state of
91 Kentucky, and one almost exclusively in the State of Indiana; and later we kept three in the State of Kentucky, besides the State manager; and I would judge the McCormick Company, possibly had five or six or seven Blockmen in that territory, from the trade of the machine; and the Deering possibly that many; and the Milwaukee I think had maybe one or two, and the Plano I remember had one; that would make a total of somewhere between fourteen or fifteen or sixteen Blockmen; I wouldn't state positively; that is my best recollection of the matter, and after the formation of this company, all of this territory which was practically the same, was managed from the Louisville office of the International Harvester Company of America, and they used about eight blockmen, possibly nine.

Q. What was blockmen paid?

A. Well, somewhere from one thousand to fifteen hundred dollars a year.

Q. Was that exclusive of their expenses?

A. Exclusive of expenses?

Q. Yes, sir?

A. Yes, sir.

Q. About what was a Blockman's expenses?

A. It would be, I would judge, from fifty to seventy-five dollars per month, possibly more than that.

Q. How many of those Companies had head-quarters in the State of Kentucky, if any?

92 A. The Deering Company had head-quarters, the Champion, and McCormick, and Plano; and that is all I know, possibly they had head-quarters somewhere else, in Kentucky.

Q. Where were those head-quarters?

A. In Louisville.

Q. After the combination what became of the head-quarters?

A. After the combination the head-quarters continued as division head-quarters, of these representative companies; After the final merger, which I think happened in the Fall of 1903, they discontinued all of them except the headquarters of the McCormick Company; that was used as head-quarters of all the various companies.

Q. What was that head-quarters styled?

A. Styled the head-quarters of this company; the International Harvester Company of America, I suppose it was.

Q. Where was those head-quarters?

A. It was in Louisville there, on First or Second Street, I don't know which it was; I think between Main and Market, on First or Second.

Q. What became of the various employes around the various head-quarters?

A. I couldn't state.

Q. Were you afterwards at the head-quarters of the International?

A. Yes, sir; I was there at different times; My head-quarters head-quarters was in Lebanon after that.

Q. You did go to those head-quarters?

A. Yes, sir.

93 Q. Did you find all of the employe's around there who were formerly at those other head-quarters?

A. Well, I don't think they were all there, but, of course, I don't recall how many I did see.

Q. After this combination was formed state whether or not the prices of the various machines of the same make were raised to the agent, or I mean listed to the agent, or sold at the same price by the company, by the International Harvester Company of America?

A. As I stated here the other day, according to my best recollection, there was a raise on them.

Q. I am not speaking of the raise?

A. I understand from that question that you mean to ask me as to whether or not the contract price made by this company to the local agent was raised after that time, higher than it was before?

Q. No, I mean, was the contract price to the agent, the same for all the machines?

A. Well, as well as I remember they were.

Q. Now, state whether or not, after this combination, there was any raise in the price of the mower, binder, and hay rake?

A. Yes, I say, as well as I remember, there was.

Q. Do you know when that raise was made, and whether more than one was made?

A. That raise was made, if it was made, it was made during the Fall of 1902, I mean it was made in the contracts made
94 in the Fall of 1902, and for the 1903 business.

Q. Do you know whether or not more than one raise was made during the time you worked for them?

A. I don't believe there was; I don't remember; I don't know whether any further raises were made or not; I don't recall; I am not absolutely positive as to this raise.

Q. Do you know how much that raise was, or about how much, say on the mower?

A. As well as I remember it was something like one or two dollars on the mower, and possibly something like five or six on the binders, I couldn't state positively. I don't make a positive statement; because I don't remember.

Q. That is your best recollection?

A. That is my best recollection.

Q. To whom did you make your reports of your business, and turn the contracts over to?

A. To the State Manager of the International Harvester Company.

Q. The International Harvester Company?

A. Of America.

Q. How did you learn there was any merger of those various companies?

A. As well as I remember I learned it through the public press, and through hearing it talked by the various people employed by these various companies.

Q. How did you receive notice of your change of employment from the Champion to the International?

95 A. I really received it from the Springfield Office; the head office of the Champion Company, at Springfield, Ohio.

Q. What sort of a notice did you receive?

A. I remember receiving a letter from the Home Office of the Champion Harvester Company, at Springfield, Ohio, telling me, that after a certain time my duties as State Manager of the Champion Harvester Company would cease, and that I would possibly be employed by this other Company; I think that was about the substance of the letter.

Q. By what other company?

A. The new company.

Q. What company?

A. The International Harvester Company of America.

Cross-examination.

By MR. STRAUS, of counsel for defendant:

Q. Mr. Gardner, do you remember whether or not, between 1902 and 1908, there was a gradual advance in the price of labor, and material, throughout the country?

A. Somewhat.

Q. From 1902, to 1908?

A. Well, I would have to say that I think there was an advance in the prices.

Q. Wasn't that advance very substantial, in every direction?

A. It has been so in our business.

Q. What is your business?

A. Distilling business.

96 Q. Didn't labor, in that time advance greatly?

A. I think it did, yes, sir; as well as I know, I am speaking in a general way.

Q. All farm products rather advanced greatly.

A. Yes, sir; I think to a very great extent.

Q. All articles that entered into the cost of living advanced in that time, substantially?

A. I think so.

Q. Do you know whether or not, in that time lumber advanced very substantially?

A. Yes, sir; I would state it did; between that time and now, I would say it did.

Q. At the time you commenced work for the International Harvester Company of America, and afterwards, was this whole territory here covered with other machines in competition with the machines handled by this defendant, such as the Walter A. Wood, Johnson, Acme, Emmerson Manufacturing Company's machines, and the machines made by those companies?

A. I don't think exactly in the way you stated it; As I stated awhile ago, the Walter A. Woods Company was represented at sev-

eral places in the territory I covered, and the Johnson, and possibly at one or two points; but the competition was not very active.

Q. Those machines were on the market?

A. Yes, sir.

Q. And were in competition with the product you were handling?

A. Yes, sir.

97 Q. And the International Harvester Company of America had nothing to do with the prices of those machines, in any way?

A. Not so far as I know; I didn't have anything to do with them as representative.

Q. The Walter A. Wood really covered every point in the state?

A. Of course, I couldn't state as regards anything except my territory; it was represented at several points in my territory; I couldn't state as to the other parts of the State.

Q. When did you cease working for the International Harvester Company of America?

A. Sometime during the Fall of 1904.

Q. To refresh your recollection, was there any advance in the machine until 1904?

A. As I told you awhile ago; I think there was an advance in the machines in 1902, and 1903 contracts.

Q. Wasn't the first advance made in the 1903 contracts, for the machines to be manufactured and delivered in 1904?

A. As I told you awhile ago, I couldn't state exactly, in regard to the second raise; If my memory is correct, the first advance, and the only advance I stated about, was the first advance, and was made in the contracts of 1902, for the 1903 business.

Q. How long did you continue selling machines after you left the International Harvester Company of America, or did you
98 continue to sell them?

A. No, sir.

Q. Have you paid any attention to machines since?

A. No, sir.

Q. Do you know anything about the present product?

A. No, sir.

Q. Whether or not it is a better product?

A. I never give the matter a thought since I left the Company.

Q. You spoke of, before 1902, that these machine Companies you have mentioned were selling machines in competition with each other?

A. Yes, sir.

Q. And now and then there were some concessions made?

A. Yes, sir.

Q. State whether or not they were made when sometimes they were selling some old stock, or old machines?

A. Concessions were made in that way very radical concessions were made in that way, as well as I remember. Also concessions were made in regard to new machines, where the conditions demanded it; that was not general; but in certain localities these concessions were made to the agents.

Q. Because of exceptional conditions in the locality?

A. Yes, sir; to a great extent on account of the exceptional conditions; and this competition.

Q. It didn't affect the uniform price of the product?

A. Not in a general way, I presume, no, sir.

99 Q. Of course, there was severe competition between the agents of those companies?

A. Yes, sir; very severe competition.

Q. And there has been some since, hasn't there, by the agents; between the agents?

A. Between the agents; there was considerable competition between the agents.

Redirect examination.

By Mr. CARROLL of counsel for plaintiff.

Q. It required considerable competition to induce those concessions, didn't it?

A. How was that?

Q. It required considerable competition and exceptional cases to induce those concessions?

A. I Didn't understand that the concessions were made by the International Harvester Company.

Q. You spoke of concessions being made on account of the intense competition, it was the intense competition that caused those concessions?

A. Yes, sir; I think so.

Q. Don't you know that in 1907 this country was struck by a very severe panic?

A. Yes, sir.

Q. Don't you know that the prices generally have gone down, including farm produce?

A. Yes, sir.

100 Q. After that time?

A. Well, I don't know that I do.

Q. Don't you know that farm produce has gone steadily down since that time, and cattle and hogs, don't bring the same price last year, and the year before, they did prior to that time?

A. I have been buying a great deal of corn and rye and barley, to manufacture whiskey, and I would have to say that was not according to my best knowledge, that they had.

Q. You mean those articles have not?

A. Yes, sir.

Q. Where do you buy it?

A. Indianapolis; St. Louis, Chicago, and Minneapolis.

Q. Take cattle, and other farm produce, you say that has gone up or down?

A. We feed three hundred cattle; fed that many year before last, and sold them; they sold for seven and a half.

Q. What did you sell them for this year?

A. Sold them last year at, I believe five and a quarter.

Q. What did you sell them for this year?

A. Haven't sold them.

Q. Didn't you feed any this year?

A. Last spring?

Q. Yes, sir?

A. Yes, sir.

Q. What—

A. I think we got five and a quarter.

101 Q. Hasn't every slopper lost money this year?

A. Yes, sir.

Q. On account of the reduction in the prices?

Counsel for defendant objected to the foregoing question and the court sustained the objection.

Q. Why did they loose money then; did the prices go down?

A. Well, I presume it did; we lost money; lost a good deal of money; the prices went down as compared with the year before.

Q. Prices have gone down then on some things?

A. They have gone down on cattle, if you take last Spring, and compare it with *last* Spring.

Q. Gone down on hogs?

A. Yes, sir; as compared with possibly the year before, a year or two before.

Q. Didn't you buy corn cheaper last year than you did the year before?

A. No, sir.

Q. You didn't?

A. No, sir.

Q. Did you have any contract for the corn you bought?

A. As well as I remember we did have a contract covering part of the corn we bought.

Q. And those contracts were made before the corn was delivered?

A. Yes, sir.

102 Q. How long have those contracts been existing?

A. I believe they were made year before last; possibly we bought eight or ten thousand bushels of corn before the season commenced; the season commences along in December, as well as I remember, that corn cost us—

Q. Did you make any contract for the purchase of corn last year?

A. I think I did, yes, sir.

Q. Wasn't that less than the year before?

Counsel for defendant objected to the foregoing question, but the court overruled the objection, to which counsel for defendant excepted.

A. To be candid with you, I don't remember the exact price I paid for corn; according to my remembrance, there wasn't very much difference.

Q. There was a difference?

A. Possibly there was; as I tell you I don't remember; I don't

charge my memory with it. I don't remember exactly what the prices were.

Q. Mr. Gardner, you are in the distilling business?

A. Yes, sir.

Q. Now, do you have your whiskey contracted for some years ahead?

A. Yes, sir.

Q. Based upon the prices paid for corn used, would the price of whiskey increase with the price of corn or decrease?

103 A. It would increase with the advance in corn.

Q. It really made no difference to you, whether you paid a big or little price for corn?

A. Yes, sir.

Q. Therefore, you paid no special attention to the price of corn on the market?

A. No, sir.

Recross-examination.

By Mr. STRAUS, of counsel for defendant:

Q. Compared with the prices, of cattle, hogs, and corn, with the prices of 1902, there is a great advance, isn't there?

A. To be candid with you, during that time, I wasn't paying any attention to that class of business, and I couldn't answer that question; but, in a general way, I think there has been a very material advance in that time, to be honest with you.

(And further the witness sayeth not.)

Court here adjourned until one o'clock, p. m., and met at said time pursuant to said adjournment.

104 J. B. MYERS, Having been called as a witness on behalf of plaintiff, and having been first duly sworn, and being examined, testified as follows, to-wit:

Direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Have you been sworn?

A. Yes, sir.

Q. State your name to the Court and jury?

A. J. B. Myers.

Q. Where do you live?

A. In Bullitt County.

Q. What official position do you hold in Bullitt county?

A. Sheriff.

Q. Mr. Myers, are you agent for any machine Company in Bullitt county?

A. Yes, sir.

Q. What company?

A. The International Harvester Company of America.

Q. What division of that Company do you represent?

A. What division?

Q. What machine belonging to that company do you handle?

A. The McCormick binder and mower; and the Champion the last two years.

Q. Where is your office; your place of business?

A. At Troutman Brothers from 1905 or 1906 until two years ago; then I am with Judge Daniels; we are partners.

105 Q. Is your office, as agent for that company, in Shepherdsville, Bullitt county?

A. Yes, sir.

Q. What machine do you sell now?

A. We sold, from '96 to '97, to two years ago, the McCormick binders and mowers; also the independent machine; Woods.

Q. What have you been selling in the last two years?

A. The Champion mower and binder.

Q. In selling that Champion mower and binder, are you selling as agent of the International Harvester Company of America?

A. They are billed to us, and we sell them; they hold us responsible for the pay. We make the contracts.

Q. Did you make the contract with the International Harvester Company of America?

A. Yes, sir.

Q. Did you have a contract with the International Harvester Company of America, for the sale of the Champion binder and mower, during the period, beginning with July 22nd, 1910, up to July 21st, 1911?

A. Yes, sir.

Q. Did you, under such contract, sell, in Bullitt county, during that period, binders and mowers?

A. How is that?

Q. (Question read to witness by stenographer).

A. Yes, sir.

106 Q. Did you buy any from them, during that time?

A. Yes, sir.

Q. From the International Harvester Company of America?

A. Yes, sir.

Q. Mr. Myers, what other agents, if any, has the defendant, International Harvester Company of America, in Bullitt County, and what other agents, if any, did it have for the year from July 22nd, 1910, to July 21st, 1911?

A. Troutman Brothers; Lutes & Co., and Daniels.

Q. You and Judge Daniels are partners?

A. Yes, sir.

Q. What machine did Troutman Brothers handle, that belonged to them?

A. The McCormick mower and binder.

Q. What machines did Lutes handle?

A. The Deering.

Q. Were those machines listed to each of the agents of that company at the same price; that is, mowers at the same price, and binders at the same price?

A. It is supposition; I suppose they are.

Mr. STRAUS: We object to his supposition.

The COURT: Sustain the objection.

Q. Were you ever so told?

A. We were so told.

Q. By whom?

A. By the linesman.

Q. The Blockman, you mean?

A. Yes, sir.

107 Q. Blockman of what Company?

A. International Harvester Company.

Q. The same Company for whom you act as agent?

A. Yes, sir.

Q. The same Company Troutman and Lutes are agents for?

A. Yes, sir.

Q. Mr. Myers, prior to 1902, August, 1902, did you act as agent for any machine Company at any time, in this county?

A. Not until 1906; 1906.

Q. Prior to 1902; before that time?

A. Yes, sir.

Q. When did you act as agent, and for what company?

A. Sometime in '80, for the Champion.

Q. For the Champion?

A. Yes, sir; mowers and binders.

Q. What Companies did you come in competition with, during that time?

A. Deering, and McCormick.

Q. Any other companies, you remember of?

A. The others——

Q. Which were your principal competitors?

A. McCormick and Deering.

Q. Has there been any increase in the price of the machines of the International Harvester Company of America, since 1902, in this county?

A. Yes, sir.

Q. When was the increase made?

108 A. Yes, sir; in 1906, the Fall of 1906.

Q. That was the first increase; the first time you became employed by them?

A. Yes, sir.

Q. After your employment when was the increase made?

A. In 1906.

Q. Was there any other increase made by the company?

A. Nothing made——

Q. How much was that increase of the price?

A. About four dollars, I think.

Q. On what?

A. Four dollars on the mower.

Q. What on the binders?

A. Fourteen for cash, and nine-twenty on time.

Q. Was there any increase in the time price of mowers?

A. Well no; no increase; we get a discount.

Q. You get a discount for cash?

A. Yes, sir.

Q. You mean the increase in the price on time—There is no time price on mowers?

A. I don't remember there being a time price on mower; I think not though.

Q. How were those—You say the time price on binders, and the cash price was how much?

A. Fourteen or fourteen and a half.

Q. Time price?

A. That was nine, I think; I am quoting from memory.

109 Q. How was the price secured when they were sold on time; what arrangement was made about it?

A. What is the question; You mean to the customer?

Q. I mean to the Company?

A. The Company furnished us the machine at a certain price, and hold us for it.

Q. When they furnish you the machine at a certain price what is the increase in the price, and has been on the binders?

A. Fourteen for cash, and about nineteen for on time.

Q. Do you get them on time from the Company, sometimes, from the International Harvester Company of America?

A. No, sir; they held us, if we executed a note, or if we paid cash; that was our price, if we didn't we paid it to the company.

Q. Who executed a note?

A. We would execute our note, or else turned it over to them; of course we had to endorse it.

Q. Turned over whose note?

A. The customer's.

Q. Could you turn over the customer's note?

A. I don't know as they did; Mr. Combs did that settlement, and Judge Daniels has been doing the settling; making the settlements in that way; they hold us responsible for the notes. I don't think they have always paid up the firm, everybody, you know.

Q. Were those notes to bear interest?

110 A. Yes, sir; bear interest.

Q. From what time?

A. From date. From September. Generally.

Q. September of each year settling time?

A. Yes, sir. If we sell a machine in July or June, we make a settlement with our customers in September, and it draws interest from September.

Q. What is the length of time on those notes?

A. That is just with the agent; anytime; six or twelve months.

Q. Troutman Brothers, agents for one branch of the International Harvester Company, and Lutes, agent for the other branch, have been selling those machines, in Bullitt county, between July 22nd, 1910, and July 21st, 1911, have they?

A. Yes, sir.

Cross-examination.

By Mr. STRAUS, of counsel for defendant:

Q. I didn't understand, Mr. Myers, when you first became agent for the International Harvester Company of America, the defendant?

A. You didn't understand when?

Q. Yes, sir?

A. I came agent with the Troutman Brothers as interested in it, in 1903; the Spring of 1906.

Q. They were the agents, and you were salesman for them?

111 A. I was salesman, and got part of the profit.

Q. The Company didn't appoint you as agent?

A. Not at that time; the Contract was made in December.

Q. The Contract was made with Troutman Brothers?

A. Yes, sir; in December.

Q. You simply helped sell the machines for them?

A. And had an interest in the profits.

Q. That arrangement was between you and Troutmans?

A. Well, of course I might have been a silent partner; They made the contract with Troutman Brothers.

Q. You made a contract with Troutman Brothers to go and sell them, and get a part of the profits?

A. Yes, sir.

Q. That was the extent of your agency with that Company?

A. With Troutman Brothers.

Q. And with the Company?

A. Yes, sir.

Q. Yes, sir.

A. Judge Daniels and I have been agents ourselves.

Q. Since when?

A. The last two years.

Q. Two years?

A. 1909 and 1910.

Q. 1909 and 1910?

A. 1910, and 1911.

Q. You and Daniels have been agents for that Company since 1910?

112 A. 1910, and 1911.

Q. Is the contract in your name, or Daniels' name, or both?

A. Daniels' & Myers'; both.

Q. What machines have you and Daniels?

A. Champion.

Q. And not the McCormick?

A. Not the McCormick.

Q. If I understand you, you say you give these agents—Do you ever endorse any of the farmers' notes, put your names on them?

A. We endorse the notes over to the Company, and they hold them, or if we didn't do that, we made our settlement and endorsed our own note, if we give notes.

Q. When you sold a machine to a farmer, on credit, did you take the note payable to Daniels & Myers, or to the International Harvester Company of America?

A. Daniels and Myers; they bill us the machine at a certain price. If we got a car load, we didn't pay no freight; if we sold them singly, we paid the freight from Louisville.

Q. I understand that when you took a note, you took it to yourselves?

A. We paid them, settled with them; and took the note to Myers and Daniels.

Q. You still don't answer my question, if you go and sell a farmer a machine, and sold it to him on credit, and took his note, to whom was that note payable?

113 A. It was payable to Myers and Daniels or Daniels & Myers.

Q. Then you turned that note over to the Company, in settlement as in part payment, and if not paid by the farmer——

A. How was that question?

Q. What became of that note, finally?

A. We held it until they paid it.

Q. You held it until it was paid?

A. Yes, sir.

Q. Then you make your settlement with the Company?

A. With the company?

Q. When did you first commence working for Troutman?

A. In 1906.

Q. 1906?

A. Yes, sir.

Q. They sold the McCormick machine?

A. Yes, sir.

Q. Also the Walter A. Wood?

A. No, not at that time; they sold the Walter A. Wood a year afterward; I got that agency, myself.

Q. In 1907?

A. 1907, I think.

Q. They were still selling the Walter A. Wood, and are now?

A. Yes, sir; I got that agency myself.

Q. Did you get it in your name, or in Troutman's name?

A. How was that?

114 Q. Was it created in you or Troutman?

A. In both, I think; I think it was in both.

Q. How is it now?

A. The agent was sent to me; and they might have drawn up the contract with Troutman Brothers.

Q. How does that Agency stand now, are you in it?

A. No, I am agent for the others now.

Q. Are they selling the Wood machine?

A. I think they are.

Q. In competition with these other machines?

A. In competition with these other machines.

Q. From the year 1902, up until 1908, wasn't there a general advance in the price of everything, material, and labor and farm product, lands and so forth?

A. Yes, sir, a general advance.

Q. That was true of lumber too, wasn't it, there was an advance in lumber?

A. Yes, sir.

Q. An advance in Labor, the price of labor?

A. Farm labor, I know there was an advance in; and general labor.

Q. Do you know anything about other machines being in this county in competition with these machines; such as the Johnson and Acme?

A. No, I don't know of any having been sold here.

Q. I mean they are here for sale?

A. Well, I don't know that they have been here for sale.

Q. When did you sell a reaper last; a binder?

115 A. Well, I don't know as we have sold a binder. I don't think we have sold a Champoin binder this year, nor last year; since I have been in with Daniels.

Q. When did you last sell a McCormick binder?

A. I think I sold one or two while I was agent four years with Troutman Brothers.

Q. In the last two years, you haven't sold a binder?

A. I don't think we have, in the last two years, a champoin binder.

Q. That is the only binder you handle?

A. I know; I don't think we have sold a binder in the last two years.

Redirect examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. You have sold mowers, between the period I mentioned, between July 22nd, 1910, to July 21st, 1911, in this county?

A. 1910, July; I think we have.

Q. Are you certain of it?

A. I am pretty sure of it; I couldn't tell without looking at the record.

Q. How long will it take you to look at that record?

A. Ten minutes.

Q. I will ask you to look and determine that fact?

Mr. CARROLL: If your Honor please I would like for the witness to examine his record and determine that fact.

116 The COURT: Very well.

(Witness retires from the stand to examine his record, and when returns makes the following answer:)

A. Sold one last year.

Q. I asked you from July 22nd, 1910, to July 21st, 1911?

A. The sales are all generally in July or in the Spring; we sell in the Spring; you see we do our selling from May to July.

Q. Did you sell any hay rake during that period?

A. Yes, sir.

Q. You know you sold hay rakes?

A. Yes, sir.

Q. I would like for you to look at your record and see what mowers you sold during that period?

A. Well, we sold one mower.

Q. During that period?

A. Yes, sir.

Q. As agents for the International Harvester Company of America?

A. Yes, sir.

Q. Mr. Myers, don't you know, that since 1907, after the panic, that the prices of farm produce, and lumber and so forth have been going down, and have been less in the last year, than they were for the years previous, you might say, 1907, after that time?

A. Yes, sir; some decrease.

117 Q. Since that time?

A. Yes, sir.

(And further the witness sayeth not.)

BERT POPE, Having been called as a witness on behalf of plaintiff, and having been first duly sworn, and being examined, testified as follows, to-wit:

Direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Have you been sworn?

A. Yes, sir.

Q. Where do you live?

A. About two miles and a half on the Bardstown & Shepherdsville road.

Q. In Bullitt county?

A. Yes, sir.

Q. Were you born and raised in this county?

A. Yes, sir.

Q. What is your business?

A. Farmer.

Q. Mr. Pope, do you handle any machines on your farm, mowers and so forth?

A. Yes, sir.

118 Q. What mower do you handle?

A. McCormick.

Q. How many have you?

A. Two.

Q. How long have you owned the first one?

A. About ten or eleven years.

Q. How long have you owned the last one?

A. About four years.

Q. Of what material was the tongue of the first one made?

A. Pine.

Q. You said mower?

A. Yes, sir.

Q. Of what material is the last made?

A. Pine.

Q. About how much pine is in the tongue?

A. How many feet?

Q. Yes, sir; about; did you ever measure it?

A. No, sir. I suppose there is about seven or eight feet, something like that.

Q. What sort of double trees have you on the old one?

A. Oak.

Q. What are on the new one, do you know?

A. No, sir.

Q. Never noticed?

A. No, sir; I think they they are oak though.

Q. How many feet of wood in the double tree; about how many?

A. Not much; only about four feet long; it ain't hardly
119 got four feet in it; about two feet and a half.

Q. All the other wood about that old McCormick?

A. There is the lifting lever and the drag lever.

Q. How many feet in them?

A. I don't know; not very much in the whole machine. I don't suppose there would be over fifteen or eighteen feet of wood in the whole machine.

Q. How much in the new machine?

A. About the same number of feet.

Q. You have used both machines, have you?

A. Yes, sir.

Q. In your opinion, which is the best machine?

A. The old one.

MR. STRAUS: We want to object to the last question and answer, and ask the court to exclude the answer from the consideration of the jury.

The COURT: Overrule the motion.

MR. STRAUS: To which we except.

Cross-examination.

By MR. STRAUS, of counsel for defendant:

Q. Mr. Pope, did you buy any reapers?

A. I bought a Champion reaper about seven or eight years ago; a Champion binder.

By MR. CARROLL:

Q. What did you pay for that old McCormick Mower?

A. Forty dollars.

120 Q. Where did you buy it?

A. Troutman Brothers.

Q. What did you pay for the new one?

A. Forty-six dollars.

Q. Pay cash, or on time?

A. Cash, for everything.

By MR. STRAUS:

Q. Is there any difference, or do you know anything about the weight of the Champion machine since 1902?

A. I don't know anything about the weight at no time, Mr. Straus.

Q. Since 1902, up to 1908, wasn't there a general increase in the price of labor and material throughout the Country, and also in farm products?

A. I don't know; I couldn't answer that. I don't know what year; there is an increase in it now and no work much.

Q. How was that?

A. There is an increase in it now, and not much work.

Q. You mean in the price of labor?

A. Yes, sir; it is a pretty good price and not much work.

Q. You farmers have been, in the last four or five years, been getting increased prices too, haven't you?

A. Yes, sir; we have been paying for them too.

Q. It goes all around, doesn't it?

A. I guess so.

Q. That is about the fair thing for it to do, isn't it?

Counsel for plaintiff objected to the foregoing question, 121 and the Court sustained the objection.

Q. Is there any other machine here on the market in competition with the one you bought, was there?

A. I don't know, sir; they say there are.

Q. Did you ever examine the Walter A. Wood reaper, or machine?

A. No, sir; I looked at it; I didn't examine it; I don't like it from what I could see; I never examined it.

Q. Did you ever examine the Johnson machine?

A. I looked at the old Johnson machine.

Q. It is on the market too isn't it?

A. I don't know sir——

Q. How many machines are there here on the market?

A. I don't know nothing about that.

Redirect examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. You say there has been an increase in the price of labor; isn't it a fact that for the last two years the prices of farm produce has gone down, since 1907?

A. Hogs are cheaper than they were.

Q. How about cattle?

A. There—They were cheaper this year than they were last year too, I think.

Q. The price of land hasn't gone down?

A. No, sir; it is going up.

(And further the witness sayeth not.)

122 J. W. POPE, having been called as a witness on behalf of the plaintiff and having been first duly sworn, and being examined, testified as follows, to-wit:

Direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Mr. Pope, where do you live?

A. Six miles North of here; on the Preston Street Road.

Q. What is your business?

A. Farming.

Q. Have you been engaged in that all of your life?

A. Yes, sir.

Q. You were born and raised, I believe, in this county, as was your father before you?

A. Yes, sir.

Q. Mr. Pope, what farming implements in the way of mowers do you use?

A. I use a McCormick now.

Q. Did you use an old McCormick, or see it used?

A. I had an old binder, not a mower.

Q. Did you ever use an old mower, or handle it?

A. No, sir; I have had this one about six years.

Q. Have you a McCormick mower now?

A. Yes, sir.

Q. How long have you had it?

123 A. About six years.

Q. What machine did you have before that?

A. I used a Whitley before that; or a Champion.

Q. What is the Whitley, the successor of the Champion?

A. I think it was.

Q. How long did you own this machine?

A. Several years.

Q. How long ago since you bought this old machine?

A. I used the Champion for years.

Q. Before 1902?

A. Yes, sir.

Q. In your opinion which was the best machine, the old machine, or the new McCormick you now have?

Counsel for defendant objected to the foregoing question and the court sustained the objection, to which counsel for plaintiff excepted.

Q. Which does the best work?

A. Well, I don't know; one does as well as the other. I liked the Champion better than I did the McCormick.

Q. You mean the old Champion?

A. Yes, sir.

No cross.

(And further the witness sayeth not.)

124 E. A. COCHRAN, having been called as a witness on behalf of the plaintiff, and having been first duly sworn, and being examined, testified as follows, to-wit:

Direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Mr. Cochran, where do you live?

A. In Shepherdsville.

Q. How long have you lived in Bullitt county?

A. All my life.

Q. What is your business?

A. Implement dealer.

Q. How long have you been such?

A. Eleven years.

Q. Where is your place of business?

A. In this town, Shepherdsville.

Q. What, if any harvesting machine do you handle?

A. Deering.

Q. Are you a member of any firm, if so, what?

A. O. A. Lutes Co.

Q. Were you a member of said firm from July 20th, 1910, to July 20th, 1911?

A. Yes, I was.

Q. Where is your place of business, and was during that time?

A. Shepherdsville.

Q. You say you handle the Deering machine?

A. Yes, sir; we do.

125 Q. What machine?

A. Deering binders, mower, and hay rakes.

Q. Did you handle them during the period I have referred to?

A. Yes, sir; every since I have been in business.

Q. What Company do you represent here; or what company are you Agents for?

A. Supposed to be for the International Harvester Company of America.

Q. Well are you?

A. We are.

Q. Were you during the period between July 22nd, 1910, and July 21st, 1911, in Bullitt County, Kentucky, and did you sell any mowers, binders, or hay rakes, as Agent for the International Harvester Company of America?

A. Yes, sir.

Q. Sell some of each?

A. Yes, sir.

Q. Mr. Cochran, when did you first become agent for the International Harvester Company of America, your firm, first become agents?

A. We have been selling those goods every since they organized.

Q. When was that, 1902?

A. Yes, sir.

Q. Were you engaged in the implement business prior to that time?

126 A. Yes, sir; in 1901.

Q. What machine were you selling then?

A. Deering.

Q. What machine did you come in competition with?

A. All of them.

Q. With all of them?

A. McCormick, and Champion, were the only two that were ever sold in this Town; McCormick, Champion; those three were sold in this town.

Q. Was that competition close and active or otherwise between those companies?

A. I don't know as I can answer that; there has always been competition.

Q. During that period then, the competition was between the companies, was it?

Mr. STRAUS: We object to the question.

Mr. CARROLL: I will withdraw it.

Q. Who represents the McCormick now?

A. Troutman Brothers.

Q. You mean they get their machines from the International Harvester Company of America; the same company you get yours from?

A. Yes, sir.

Q. Who represents the Champion Machine Company?

A. Judge Daniels and T. B. Myers.

Q. Where do they get their machines?

A. From the same Company.

127 Q. Do you know whether or not all of those machines are listed with the agents at the same price, or have you information to that effect?

A. I have information to that effect.

Q. From whom did you get your information?

A. Their Blockman.

Q. Blockman for whom?

A. The same man makes the contracts with us and Daniels and all.

Q. Blockman for the International Harvester Company of America?

A. Yes, sir.

Q. What is his name?

A. Wooten.

Q. Who was it before Wooten?

A. Ireland.

Q. Has there been, since this combination was formed in 1901 has there been any increase in the price of the mowers and binders in this county?

A. Yes, sir; there has been some.

Q. How many increases were made?

A. About three.

Q. When was the first made, or about when?

A. First was in 1904.

Q. 1904?

A. Yes, sir.

Q. When was the second made?

A. 1906; I think.

128 Q. When was the next made?

A. 1908.

Q. What was the increase in the aggregate, what did it amount to on the mower?

A. The increase on the mower has been between three and four dollars.

Q. Cash or time price?

A. Cash.

Q. How much on the time price?

A. More?

Q. How much more?

A. I don't know; some more.

Q. Was the increase in the cash price nearer four or three dollars?

A. It was over four.

Q. What was the increase on the binders?

A. Between Twelve and fourteen dollars.

Q. Cash or time?

A. Cash.

Q. What is the increase in the time? how much?

A. That is more, Mr. Carroll.

Q. About how much?

A. I don't know how much, for the simple fact that we always paid cash.

Q. You don't know what the time price is?

A. No, sir.

Q. You said you bought and sold within the year from July 22nd, 1910, to July 20th, 1911?

129 A. 1902; you mean.

Q. No, from July 22nd, 1910, to July 20th, 1911, you have bought and sold deering machines in this county?

A. Yes, sir; in one year's time; Yes, sir.

Cross-examination.

By Mr. STRAUS, of counsel for defendant:

Q. Mr. Cochran, I understand you to say that the first increase was in 1904?

A. I think that was the first, Mr. Straus.

Q. At that time, from 1902 up to 1904 there had been an increase in the price of labor and material, hadn't there, a slight increase?

A. Yes, sir.

Q. The next increase in the price of the machine was in 1906, about?

A. I think the next one was in 1906.

Q. And from 1904 to 1906, labor and material and everything else was going up?

A. Yes, sir.

Q. In 1908, there was another increase?

A. In mowers and binders both.

Q. And, also everything else had gone up and reached its height in 1908?

A. It had to my best knowledge.

Q. I say, that is your recollection?

A. Yes, sir.

130 Q. Was there any change in the price of these machines in 1909?

A. Yes, sir.

Q. What was it?

A. Decrease of three dollars.

Q. Because material and labor had somewhat decreased in 1909?

A. I don't know; there was a decrease.

Q. Of three dollars?

A. Yes, sir.

Q. For 1909?

A. Yes, sir.

Q. And they have remained that way every since?

A. Yes, sir; 1909, 1910, and 1911.

Q. Did you sell any binders this year?

A. Yes, sir.

Q. To Mr. Neil Trunnell?

A. Yes, sir.

Q. What did you sell it for?

A. One hundred and twenty-five dollars, cash.

Q. Didn't you sell it for one hundred and ten dollars?

A. No, sir; I did not.

Q. What else have you sold this year?

A. Sold mowers and binders both.

Q. Mr. Cochran, hasn't there been a gradual improvement also, in these machines, since 1902, in the make and get up of the machine?

131 A. There have been changes, I don't know whether they are improvements or not.

Q. They have been more satisfactory in this territory selling in competition with this machinery; the McCormick, and Champion, hasn't there?

A. Yes, sir; there have been other machines sold.

Q. And are still in competition with yours?

A. Yes, sir.

Q. Not controlled by the International Harvester Company of America?

A. There are some independents, yes, sir.

Q. The Walter A. Wood is an independent?

A. Yes, sir; said to be.

Q. And the Acme?

A. So far as we know.

Q. There are quite a number of independent Companies selling machines in this territory, mowers, are there not?

A. I don't know of any but the Walter A. Wood and Johnson.

Q. I am talking about mowers, those are binders?

A. Those are the only mowers I know of, there is the Thomas.

Q. The Emmerson?

A. The Thomas.

Q. The Emmerson?

132 A. I don't know that.

Q. The Standard mower?

A. I don't know that.

Q. Do you know anything about the Deere; sold by the B. Deere Company?

A. I don't know.

Q. They are offered for sale in this territory?

A. I don't know; I don't think there has ever been any sold in this territory.

Q. They are offered for sale in this territory?

A. I don't know.

Redirect examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. What machine has there been a decrease in the price of since 1908?

A. Binder.

Q. There has been no decrease in the mower?

A. No, sir.

Q. How much was the increase, from 1902 to 1909, on the binder?

A. About twelve or fourteen dollars.

Q. Before that, 1909?

A. Yes, sir.

Q. What is it now?

A. You mean the increase now?

133 Q. Yes, the increase on 1902?

A. About three dollars less.

Q. I am asking you how much it was, you said -while ago it was from fourteen to sixteen dollars.

A. Twelve to fourteen dollars.

Q. How much is the decrease now, on the binder; what does it sell for now, from the Company, I am talking about?

A. From the Company?

Q. Yes, sir?

A. Three dollars less than it was in 1908.

Q. In 1908—When was that decrease made?

A. In the year 1909.

Q. The machine sells for between ten and eleven dollars more than it did in 1902?

A. Yes, sir.

Q. Ten or eleven Dollars more?

A. Yes, sir.

Q. There is that much increase about four dollars?

A. Between three and four.

Q. There was no decrease in the mowers in 1908, or 1909?

A. Never have been any.

Q. Any in the rakes?

A. No, sir.

Q. Nothing but the binders?

A. No, sir.

134 Q. The same kind of material is used in the mower as is used in the binder; generally speaking?

A. I can't—

Q. How long have you been in the machine business?

A. Eleven years.

Q. And you are thoroughly familiar with the parts?

A. Yes, sir.

Q. And the same character of material is used in them, both machines?

A. So far as I know.

Q. From the eleven years' experience?

A. Yes, sir.

Q. On the binder there has been a decrease of three dollars?

A. Yes, sir.

Q. No decrease in the mower or rake?

A. No, sir.

Q. Now after this decrease—Before this decrease in the price was made, you carried repair materials, didn't you?

A. Yes, sir.

Q. Since that time haven't they been gradually taking that repair material away from you?

A. No, sir.

Q. They have taken some of them away?

A. No, sir.

Q. You still have them?

A. Yes, sir; I have as big an inventory now as I had in 1902.

135 Q. Where do you get them?

A. I carry them in stock.

Q. Has the price increased?

A. Yes, sir on some; and on some it has decreased.

Q. Decreased?

A. Yes, sir; on some things.

Q. To what extent, has the increase or decrease been greater, taking it as a whole?

A. That is something I can't answer. Some things have been increased; and some things have been decreased.

Q. Now Mr. Cochran, I understand that you have the same repair privileges, now, the same facilities for purchasing and holding repairs that you had prior to 1908?

A. Yes, sir; we have the same privileges we have had since we have been engaged in the business, eleven years.

Q. Isn't it true, Mr. Cochran, that since 1907 there has been a gradual decrease in the price of various articles, including farm produce; a gradual decline in the market conditions, since the panic in 1907, and isn't it true that farm produce, as well as other character of produce, is not as high now as it was prior to 1907?

A. Some things are cheaper and some things are higher.

Q. Isn't it, on an average, lower?

A. It might be, if you average it up.

Q. Isn't it a fact that everything is lower now, and has been for the year prior to July 21st, 1911, than it was prior to 1902, for two years prior to that time?

136 Counsel for defendant objected to the foregoing question, but the court overruled the objection, to which counsel for defendant excepted.

A. That is a question, I can't answer.

Q. Yes, sir?

A. Because, I haven't taken observation in everything; there isn't but one thing I would state, as I stated the other day that is cheaper now than it was then; that is flour.

Q. You noticed that?

A. Yes, sir.

Q. You haven't noticed the other things?

A. No, sir; the reason I noticed that is we handle flour.

Recross-examination.

By Mr. STRAUS, of counsel for defendant:

Q. Everything else is higher except flour?

A. To my knowledge, yes, sir.

(And further the witness sayeth not.)

137 LEONARD HOWLETT, having been called as a witness on behalf of the plaintiff, and having been first duly sworn, and being examined, testified as follows, to-wit:

Direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Where do you live?

A. Bullitt county; eight miles west of Shepherdsville.

Q. Where were you born and raised?

A. In Bullitt county.

Q. What is your business?

A. Farmer.

Q. Have you been a farmer all your life?

A. Yes, sir.

Q. What character of machinery do you use; harvesting machinery do you use; what make, if any?

A. I use the Deering.

Q. Have you a Deering on your place now?

A. Yes, sir; I have a Deering corn harvester and a Deering Mowing machine.

Q. How many Deering mowing machines have you?

A. Two.

Q. When was the last one bought?

A. I think about four years ago.

Q. Do you remember what you paid for it, or about?

A. I am not exactly sure, I think forty-six dollars.

Q. How long have you had the old machine?

A. My father bought that machine I think about eighteen
138 or twenty years ago.

Q. Have you used both machines?

A. Yes, sir.

Q. Which is the best machine, the new or the old one, and does the best work?

Mr. STRAUS: We object to the foregoing question.

The COURT: He may answer which does the best work.

A. The new machine does the best work now, for the old one is practically worn out now; but I think the old machine has been decidedly the best machine.

Mr. STRAUS: We object to that last statement.

Q. Why do you think so?

A. It has done more cutting without the same repair; with less repair; we have repaired the new machine now more than we ever did the old one.

Mr. STRAUS: We object to the answer.

The COURT: Overrule the objection.

Mr. STRAUS: We except.

Q. That is, during the same length of time, you used the old machine more than you did the new one——

A. The old machine has cut several times as much grass and weeds as the new machine, and the new machine is practically worn out now.

139 Cross-examination.

By Mr. STRAUS, of counsel for defendant:

Q. When did you have any repairs done on the old one?

A. Well, I hav-n't had any repairs done on the old one since I bought the new one.

Q. When did you buy the new one?

A. Four years ago.

Q. You hav-n't run the other one since?

A. Yes, sir; I run it some.

Q. Not much?

A. No, not much.

Q. You bought the new one to help the other one out?

— — And the new one we use when we want to run two, and when we only run one, we run the new one instead of the old one.

Q. The question of repairs largely depends on the way — machine is handled and the character of ground it runs over?

A. Yes, sir; it does.

Q. And the kind of team you have hitched to it? All of those things enter into that?

A. Yes, sir; in that case though, it would be decidedly in favor of the old machine.

Q. Which is the heaviest machine?

A. I think the new machine is the heaviest machine.

Q. Which is the stoutest machine?

A. Well, I don't know which is the stoutest; the old machine has proved to be the best all along; done more cutting with the same repair.

Q. Is there the same kind of material in the machines?

A. Decidedly the best material in the old machine.

Q. What kind of material is there in it?

A. In the old one, and I have had two new pitman rods already for in the old one, and I have had two new pitmans rods already for the new machine; and I don't think I even had——

Q. You say the new one is lighter or heavier?

A. The new machine, the weight of the frame and wheels; I think the new machine is the heaviest machine; I really don't know whether there would be much difference in the weight of the machines or not; it pulls heavier, I know that; I am positive it pulls the team heavier, and it looks like a heavier machine; I wouldn't say; I didn't weigh them, and don't know exactly.

Q. What does a mower weigh?

A. I don't know exactly what it weighs.

Q. Three hundred pounds?

A. Yes, it weighs more than that.

Q. Six hundred pounds?

A. I don't know exactly what it weighs. I am guessing from eight to—eight hundred to a thousand pounds; I don't know.

141 Redirect examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. You said, in answer to a question asked you by counsel for defendant, that in the use of the machines the advantage would be in favor of the old machine, now I ask you why the advantage would be in favor of the old machine, did you work over worse ground?

A. Worked over some of the same ground, and some worse ground, and decidedly more of it; did more cutting.

(And further the witness sayeth not.)

Counsel for plaintiff here announced to the Court that they would rest their case here. For the present.

Counsel for defendant here moved the Court to peremptorily instruct the Jury to find in favor of the defendant, to which counsel for plaintiff objected, and the Court sustained said objection and overruled said motion, to which counsel for defendant excepted.

142 The following evidence was here introduced and heard on behalf of the defendant, to-wit:

JAS. L. GARDNER, having been called as a witness on behalf of the defendant, and having been first duly sworn, and being examined, testified as follows, to-wit:

Direct examination.

By Mr. STRAUS, of counsel for defendant:

Q. Where do you live?

A. Louisville.

Q. How long have you lived there?

A. I was born in Louisville, and have lived there all of my life.

Q. What is your occupation?

A. General Agent for the International Harvester Company of America, for a portion of the State of Kentucky.

Q. What portion of the State?

A. Forty three counties directly south of Louisville.

Q. Does that include Bullitt county?

A. Yes, sir.

Q. How long have you been in that position?

A. Since October first, 1910.

Q. What position did you occupy with that company before that?

A. Assistant General Agent for the same territory, and in
143 the same office.

Q. For how long?

A. From April, 1908.

Q. Before that?

A. I was connected with the Chicago office, as Traveling Auditor.

Q. What Company?

A. International Harvester Company of America.

Q. How long have you been handling these machines, and agencies, as Assistant and General Manager of this Company in this Territory?

A. Since April, 1908. I was with the—Since April, 1908.

Q. Are you familiar, and have you been familiar with the machines, mowers and reapers manufactured by the International Harvester Company, and sold by the International Harvester Company of America, since 1902?

A. Yes, sir.

Q. I will get you to state which product is the best, and gives the best satisfaction, the machines manufactured since 1902, or the machine manufactured prior thereto?

Counsel for plaintiff objected to the question. No ruling.

A. My answer as to which gives the best satisfaction, is; unqualifiedly, those manufactured since.

144 Q. Which is the better and more efficient machine, the ones manufactured prior to that time, by the Deering Company, Champion, McCormick, and other machines mentioned;

which is the most efficient, the machines manufactured since that time, or those referred to, manufactured prior to that time?

A. Those manufactured since that time.

Q. Since the combination of these Machine Companies, the Deering, Champion, McCormick, and Milwaukee, state to the jury whether or not there has been a gradual improvement in the manufacture of those machines?

A. There has; yes, sir.

Q. Why do you say that they are better now than they were before?

A. Every record we keep of the business, discloses that fact. In our contracts which we make we agree to replace all parts that break through defect of material; and the reduction of that shows absolutely—

MR. CARROLL: We object to that statement; the contract is the best evidence.

The COURT: Sustain the objection.

Q. Your knowledge; take that repair question?

A. That is my knowledge, that is handled by me.

Q. How about the repairs on the last manufactured machines as compared with the former product.

A. The manufactured machines, as compared with the former product?

Q. As to repairs?

145 A. We are called upon to furnish a great deal less parts broken through defect, than we were formerly.

Q. Does your Company furnish experts to put in these repairs?

A. The International Harvester Company of America pays the experts.

Q. Do they send an expert to the farmer?

A. Whenever they ask for one.

Q. Is that more frequent or less frequent than it was under the old product?

A. Very much less frequent.

Q. What about the increase or decrease in the weight of these various machines?

A. I am speaking from merely my knowledge of the Deering binder. The Deering binder weighs one hundred pounds more as shipped today, than it did in 1902.

Q. Why was that done, or do you know.

A. The Deering binder as considered, prior to 1902 as being too light. It was a light running machine; but it was not as durable as some other machines on the market. Since 1902, the International Harvester Company has improved the Deering machine by strengthening those parts which were weakest, prior to that time; thereby putting them nearly on an equal footing with the other machines.

Q. Take up the McCormick; what has been done to that machine?

A. Prior to 1902, we commonly referred to it as a horse-killer.

A. Until October, 1902.

Q. Then—Were you out on the road any?

A. Yes, sir.

Q. Where did you travel?

A. All over the United States.

150 Q. From October 1901, to 1902?

A. Yes, sir.

Q. Did you spend any of your time in Kansas?

A. Yes, sir.

Q. What were you doing there?

A. Auditing the Deering Harvesting Company's accounts.

Q. Where were you when the combination was formed?

A. Wichita, Kansas.

Q. How did you acquire knowledge of the combination?

A. My knowledge came from here—say, and newspaper accounts.

Q. How did you continue working?

A. Just as I had been.

Q. How long did you continue?

A. Until my contract expired.

Q. When was that?

A. I think, 1903, as near as I can recollect.

Q. For whom were you working during that period, were you working for the International Harvester Company of America or for the Deering?

A. Working on the Deering Harvesting Company's books.

Q. Who were you working for?

A. As far as I know, I was working for the Deering Harvesting Company?

Q. When was this combination formed?

A. August, 1902, is my recollection.

Q. When was the Deering Harvesting Company taken over, wasn't it one of the first to go into the combination?

A. I don't know.

151 Q. From where did you receive your check for payment of your salary?

A. Chicago office.

Q. How was it made out?

A. I received my check, as long as my contract lasted, from the Deering Harvesting Company.

Q. Up to 1903?

A. It came just the same; I can't recall any difference.

Q. You received no information from the home office that the combination had been effected, or the consolidation?

A. No, sir.

Q. Had no notice in any way, or shape?

A. No, sir.

Q. You continued in that state of ignorance until what time?

A. Latter part of 1902 or 1903.

Q. I understood that the combination was made in 1902?

A. Yes, sir.

Q. You say you worked for the Deering Harvesting Company until the latter part of 1903?

A. I said my understanding was, as far as my work, I went right ahead.

Q. But whom were you working for; don't you know, and didn't you know then, that you were working for the International Harvester Company of America, who had taken charge of the Deering Machine Company?

A. No, sir; I don't know. My contract was with the Deering Harvesting Company, and continued so.

152 Q. When did it cease?

A. Latter part of 1902, or the early part of 1903.

Q. After your contract ceased, who did you go with?

A. International Harvester Company of America.

Q. Where did you go?

A. I continued the same work.

Q. Where?

A. In this country.

Q. In what portion of the country?

A. Up until October or November, I was in the United States.

Q. What points in the United States?

A. All over it, every state.

Q. How much of the time did you spend in Kentucky?

A. My home was in Kentucky; and I was there frequently.

Q. How much of the time did you spend on business in Kentucky?

A. My duty was to audit the Deering Branch in Louisville.

Q. How often did you do it?

A. Every year.

Q. You came to Kentucky once a year?

A. Yes, sir.

Q. Up to what time?

A. Until November, 1902.

Q. November, 1902?

A. Latter part of 1902.

Q. And then where did you go?

A. Australia.

153 Q. In 1902?

A. Yes, sir.

Q. How long did you stay in Australia?

A. I came back here in—First came back in 1905, and went back, and returned in 1906.

Q. Mr. Gardener, didn't you say a few moments ago, that you were working for the International Harvester Company of America in Kansas and other points in the United States, up until 1903, and that that year you came back to Louisville, Kentucky, and went to Auditing books?

A. Yes, sir.

Q. Then how do you explain that you went to Australia, in 1902?

A. I stated I worked for the Deering Harvesting Company until the latter part of 1902 or 1903.

Q. Then went to Australia?

A. Yes, sir.

Q. If you were in Australia, how were you auditing the books of the Deering Harvesting Division of the International Harvester Company of America, in Louisville, in 1903?

A. I wasn't auditing the books of the Deering Harvesting Company in 1903.

Q. You were mistaken in that statement then?

A. I never have made that statement, if you will pardon me.

Q. You remained in Australia from the time of the formation of this combination until 1905?

A. I remained there from the time I went, the latter part 154 of 1902 until 1906.

Q. When was the International Harvester Company of America incorporated?

A. I don't know.

Q. Have you no information on that subject?

A. No, sir.

Q. You have been working for it since 1903?

A. Yes, sir; about that time.

Q. Worked for it all over the United States?

A. Yes, sir.

Q. Worked for it twice in Australia?

A. Yes, sir.

Q. And you are General Manager for the State of Kentucky?

A. Yes, sir.

Q. And don't know when it was incorporated?

A. No, sir.

Q. Do you know when it went into business?

A. No, sir; only from hearsay; I never received——

Q. Do you know where its headquarters are?

A. In Chicago.

Q. Do you know where it was incorporated?

A. My understanding—I have no knowledge personally—is that it was incorporated in the State of Wisconsin.

Q. Do you know when?

A. No, sir.

Q. Do you know when you commenced to work for them?

A. I commenced working for them when my contract with the Deering Harvesting Company expired.

155 Q. The latter part of 1902 or first part of 1903?

A. Yes, sir.

Q. What time did you start to Australia?

A. Latter part of 1902.

Q. Did you start for the Deering Harvesting Company, or for the——

A. Started for the Deering Harvesting Company.

Q. When did you first learn that you wasn't working for the Deering Harvesting Company?

A. When I got a new contract to sign.

Q. When was that?

A. Shortly after I got to Australia.

Q. About when was that?

A. Probably in the Spring of 1903.

Q. What character of contract was it?

A. Personal service contract with the International Harvester Company of America?

Q. Representing what?

A. I was representing them as Auditor.

Q. For what division?

A. International Harvester Company of America; No division.

Q. What other machines do they handle over there?

A. Deering; and some McCormick.

Q. You weren't auditor of the McCormick?

A. I was auditing the Deering books.

Q. Who audited the McCormick books?

A. No one.

156 Q. What other branches was over there?

A. That was the only one represented.

Q. You say McCormick?

A. Yes, sir.

Q. Wasn't the Champion?

A. Not to my knowledge.

Q. Were you ever up in Canada?

A. Yes, sir.

Q. What divisions of the International Harvester Company of America have they up there?

A. I haven't been in Canada since the formation of the International Harvester Company of America.

Q. When were you in Canada last?

A. I think, so far as I recall, in the Spring of 1901, or 1902, perhaps.

Q. What other countries has the International Harvester Company of America its establishments?

Counsel for defendant objected to the foregoing question, but the court overruled the objection, to which counsel for defendant excepted.

A. I can only speak from personal knowledge; that is Australia.

Q. From your general knowledge, in connection with the business, what other countries?

MR. STRAUS: We object.

THE COURT: He may answer if he knows.

A. (No answer.)

157 Q. From the information you have received by reason of your position, state in what other countries the International Harvester Company of America is doing business, and the machines, McCormick, Plano, Deering, Milwaukee, and Champion are being sold and controlled by the International Harvester Company of America?

Counsel for defendant objected to the foregoing question, but the

court overruled the objection, to which counsel for defendant excepted.

A. Australia is the only country I know of.

Q. From the information you have received in the course of your business?

A. Australia is the only one I know of.

Q. Do you know anything about Canada?

A. My Information is that the International Harvester Company of Canada does business there.

Q. Does the International Harvester Company of America work there?

A. Not so far as I know.

Q. What connection is there between the International Harvester Company of America and the International Harvester Company of Canada?

A. I don't know.

Q. Doesn't the International Harvester Company of America work in Germany, Russia, Spain, England and Asia?

A. As a matter of general knowledge, the International Harvester Company of America does not.

158 Q. Mr. Gardener, you say you have about forty-five men employed in your division?

A. Yes, sir.

Q. How are they employed?

A. Bookkeepers and——

Q. How many?

A. Two.

Q. What others?

A. Bill Clerk?

Q. One Bill Clerk?

A. Yes, sir.

Q. Well?

A. Credit Clerk.

Q. All right?

A. Advertising Clerk, and assistant; two stenographers; that comprises the office force.

Q. What do you pay the book keepers?

A. The Chicago office employs the head book keeper.

Q. I am asking what they are paid?

A. What salary; Fourteen Hundred dollars a year.

Q. What is the next one paid?

A. Paid a salary of seventy five dollars per month.

Q. You say there is a Bill Clerk, what do you pay him?

A. Sixty-five dollars; as near as I can recollect.

Q. What does the credit clerk get?

A. Seventy-five dollars.

Q. What does the advertising clerk get?

A. Seventy five dollars.

159 Q. His assistant?

A. Fifty dollars.

Q. The stenographers?

A. Stenographers; one of them, as near as I can recall, seventy five dollars, and the other sixty.

Q. They comprise your office force?

A. Yes, sir.

Q. Where is your office—Where was the office of the Deering situated in Louisville?

A. Corner of Brook and Main.

Q. Who comprised the office force there?

A. Myself and a stenographer.

Q. Had no recollection agent there?

A. That was a separate department, as it is now.

Q. I was speaking of the Deering?

A. That was a separate department, as it is now.

Q. What other employes have you?

A. Have we now?

Q. Yes, sir.

A. Outside of those mentioned. Four men, in the repair department.

Q. What is their salary?

A. They will average about seventy five dollars per month.

Q. Well, go on?

A. I have a shipping clerk.

Q. How much does he get?

A. One thousand dollars a year.

160 Q. Well?

A. I have a Warehouseman; he gets a thousand dollars a year.

Q. Well?

A. I have three men in the Warehouse that average about—rough workmen in the warehouse; average about fifty dollars per month, as well as I recall.

Q. Go ahead?

A. We have eight blockmen.

Q. What territory do they take in?

A. The Eight blockmen; I will have to say that I have six blockmen in the State of Kentucky.

Q. Well, go ahead?

A. I have, as near as I can recall, nineteen salesmen.

Q. Where?

A. I will say fifteen salesmen—Seventeen salesmen in the State of Kentucky. I have employed at this time about eight experts.

Q. How long does their employment continue?

A. Them that are on now are by the year.

Q. How long have they been on; and how long have you had that many experts?

A. That is our normal strength; force.

Q. What is an expert?

A. He is a man who repairs machines, and sets them up, and starts them, and when there is any difficulty he rectifies it.

Q. You have eight of them?

161 A. Yes sir.

Q. How many did you have when you represented the Deering here?

A. Experts?

Q. Yes sir.

A. About, not more than a dozen.

Q. Had about a dozen?

A. During two or three months.

Q. Regularly?

A. We didn't employ any experts regularly.

Q. You have to have eight now?

A. Yes, sir.

Q. Who else have you?

A. In the season time——

Q. Yes, sir; what do you pay the experts?

A. I suppose they average about sixty five dollars per month.

Q. That doesn't include expenses?

A. No, sir.

Q. What are their expenses, on an average?

A. Two and a half or three dollars a day.

Q. Go ahead and tell who else you have?

Q. I think that is the extent of my force.

Q. Does that force take in all of Kentucky?

A. No, sir.

Q. Where is the other headquarters. They all work from your office?

A. This is my office.

162 Q. Is there another office in Kentucky?

A. No sir.

Q. Where does the other force work from?

A. Cincinnati, Parkersburg, and Memphis.

Q. The main work is done from your office?

A. Forty three counties.

Q. Mr. Gardner, I didn't catch your reason for reducing the price on binders in 1909, I will have to ask you to repeat it. I was unfortunately taking a drink of water, at the time you stated it?

A. To the best of my recollection, the company was, able, through economy to make a reduction of the price of binders of three dollars, over the price they had given us in 1908.

Q. How much was the weight of the Plano mower reduced?

A. As far as I know it has never been reduced; I think it is heavier than it ever was.

Q. Are you certain of that?

A. That is my general knowledge.

Q. What others have been reduced in weight?

A. Haven't any of them been reduced in weight.

Q. Didn't you say that one of them was reduced seventy five pounds in weight?

A. Not a mower.

Q. None of the mowers reduced?

A. No, sir.

Q. How much did they increase, if any, the weight in any of the mowers?

163 A. Some of our mowers, take the Deering; I should say the Deering mower we sell now and have been selling for two or three years, would weigh fifty pounds more than the old mower.

Q. That is the Deering; what other mower has been increased?

A. I can't speak definitely as to the others; it is only general knowledge, I have old mowers and new mowers both around the place under my eye all the time.

Q. Do you know why that reduction was made?

A. Reduction of what?

Q. In the price of binders.

A. No, sir; only as I have stated.

Q. Now, Mr. Gardener, the harvesting and binding machine is new business; that is, it has not been in existence over forty or fifty years?

A. No, sir; it hasn't been in existence longer than that.

Q. The earlier machines, both the mower and binder were very cumbersome and expensive affairs?

A. Yes, sir.

Q. And the McCormick and Deering were covered by numerous and valuable patents?

A. My understanding is they were up to 1906—1906.

Q. And so continued up until 1896?

A. Yes, sir.

Q. Isn't it a fact that the McCormick and Deering, from the time of the first make, on up to 1896, were being continuously improved, the machines?

A. Yes, sir.

164 Q. And they have been reduced in weight and made more efficient?

A. Yes, sir.

Q. And, by reason of the skilled labor, with more knowledge of the method of doing business, that is manufacturing this machinery, and by the fact that the farmers realized the advantage in the machines manufactured, and the machines became better all the time?

A. Yes, sir.

Q. And the price was going down during all of those years?

A. Yes, sir.

Q. Mr. Gardner, tell us, either from your personal knowledge, or knowledge received by you through the position you occupy, how many harvesting machines and binders the International Harvester Company of America sells in the United States in a year?

A. I couldn't make any guess.

Q. How many do you sell in Kentucky?

A. I couldn't say that.

Q. You couldn't say that?

A. No, sir.

Q. How many do you sell in the forty-three counties in which you are General Manager?

A. I should say on an average of about five or six hundred a year.

Q. Of which?

A. Binders.

Q. How many mowers?

165 A. Probably two thousand.

Q. How many hay rakes?

A. About on an average, I should say of twelve hundred.

Q. Did I understand you to say that the price of material and everything has been going up since 1902?

A. So far as I know; yes, sir.

Q. How much do you know about it?

A. I pay the bills at home; I know that is some little.

Q. At your office?

A. Yes, sir; everything we buy we pay more for.

Q. You pay more for it than you paid in 1902?

A. Yes, sir.

Q. You do?

A. Yes, sir.

Q. For the material that goes into the make and construction of those machines?

A. For the material, lumber, timber is higher?

Q. That is higher?

A. Yes, sir.

Q. Are you as certain of that as *you* any other statement you have made here?

A. Yes, sir.

Q. I will ask you as a matter of fact, if for the period embraced by the years 1899, 1900, 1901, and 1902, and for the period embraced by the years 1908, 1909, 1910, and up to July 21st, 1911, that the prices of the various materials that go into the construction of those machines, isn't a little less, if anything?

166 A. I know nothing about the identical material; but what we buy at the Louisville office up here is higher; we have to buy other machinery.

Q. Didn't you say in answer to a question asked by counsel for defendant, that everything that went into the construction of those machines had gone up?

A. As far as I know.

Q. Then you don't know anything about it?

A. I don't know anything about the cost of the identical material that goes into the machines.

Q. Don't you know that the period from 1904 up to 1908, take that period, that the price of the material that goes into the construction of that machine, on an average was less than on the same material prior to this combination?

A. I don't know that it is.

Q. Do you know that it is not?

A. My opinion is that it is.

Q. Upon what do you base that opinion?

A. Upon the general knowledge of the markets and my—

Q. If your opinion is based on your general knowledge of the market, is your general knowledge of the market such as you undertake to tell the jury that the prices between the period mentioned, 1903 to 1908, were higher than the period from 1899 up to 1902, August?

A. Take the general line of materials?

Q. Yes, sir?

A. I should say it was higher.

167 Q. Yes, sir; you are certain about that as you are any other statement you have made as a witness?

A. As far as my knowledge goes.

Redirect examination.

By Mr. STRAUS, of counsel for defendant:

Q. Mr. Gardener, you have a knowledge about the increase of the price of labor?

A. Yes, sir; positive.

Q. That advance has been substantial?

A. Yes, sir; and steady.

(And further the witness sayeth not.)

JOHN F. STEWARD, having been called as a witness on behalf of the defendant, and having been first duly sworn and being examined, testified as follows, to-wit:

Direct examination.

By Mr. STRAUS, of counsel for defendant:

Q. Mr. Steward, how old are you?

A. Little past seventy.

Q. Where do you live?

A. Chicago.

Q. How long have you lived there?

168 A. Was born fifty miles from there; and have lived about there and in the City practically all of my life, the last thirty one years I have resided there continuously.

Q. From the time you commenced in life, what has been your occupation?

A. I was born on a farm, and worked as a farmer until I was twenty one. Since that time, with a short lapse or two, my business has been that of inventing and perfecting the harvesting and mowing machinery; and incidentally other agricultural tools.

Q. What was the first harvesting machine you had any connection with.

A. Marsh Harvester; my father brought it on his farm when I was not old enough to remember a reaper; and one of my brothers and I, as fast as we became old enough to, we operated it on the farm; then in 1860 I as a little school boy, was near a little factory, it was near my father's farm, and I witnessed the building of the first successful machine, harvester, that is to say a machine like the

present binder, with the exception that in the place of the binder attachment, we now find, there was a foot board upon which two men stood, taking the straws from the receptacle when the grain come over the elevator; each would grasp it by the straw thus, and end it thus and bind it on a table by his side. In '65, forty six years ago and over now, I began work as a mechanic on those machines; since which time my business has been that as stated, of perfecting, principally, harvesters and binders.

169 Q. When did you first commence work on the Deering?

A. That was in 1865; Mr. Deering came in five years later. The Deering concern which sold to the International Harvester Company of America was a successor of the Marsh Harvester Company, and consisted of one of my brothers and the Marsh Brothers, inventors of the Harvester.

Q. When did you commence with the Deering machine?

A. Mr. Deering came in five years later, and it then developed into the Deering Harvesting Company, with which I was, until the sale of that company to the International Harvester Company of America. And I say to my friends that I was one of the assets, when the Company sold out, and went with it, although my name wasn't on the inventory.

Q. How long did you continue with the Deering?

A. Since 1870, really though the Deering didn't begin to take an active part in it until 1873.

Q. What were you doing at that time, with the Deering?

A. Inventing and perfecting improvements.

Q. When did you go with the International Harvester Company?

A. August 15th, 1902. I should have said that a large part of my time during each year has been in the harvest field with the machines; somewhere from one week to sometimes five months in each year.

Q. You have had large experience in the development of the machine in the field?

A. Yes, sir; that has been my large work; my life work.

170 Q. State whether or not Mr.—what is your present connection, position?

A. I am somewhat active in inventing and developing, now; but my time is principally taken up in patent matters. And a sort of supervision over their machinery; a sort of consulting engineer.

Q. For the International Harvester Company, the manufacturing plant?

A. Yes, sir.

Q. You don't work with the International Harvester Company of America at all?

A. Not at all.

Q. The Deering machine, Champion, McCormick, and Milwaukee are all manufactured by the International Harvester Company?

A. That is correct.

Q. And have been, since 1902?

A. Yes, sir.

Q. Has the International Harvester Company of America ever manufactured anything?

A. Not that I know of.

Q. Since this combination, and since the International Harvester Company has been manufacturing all of these machines, has there been any improvement in the McCormick, Deering, Milwaukee, Champion, and Plano?

A. Very many.

Q. Take up the McCormick; what improvement has been made in that, Mr. Steward?

171 A. The principal improvement that has been made in that machine is the substitution of a new tripping device; the device for making the bundles to be of uniform size. As soon as the new company was organized, that is the International Harvester Company, the war-ing elements, I put it, though I put it advisedly, found that various machines were defective in various respects; in fact each competitor had knowledge that the other machines were defective in some respects; and then when the Company was organized it went to work to correct the defects in all of the machines, and that has been as much my business in an advisory capacity as anything else. Coming back to the McCormick, as your question requests, the tripping device was defective; as a matter of fact, the binding attachment we found not quite as certain to tie, and not quite as certain to trib correctly as some of the others. Men were put to work making those corrections, and about three years ago we began putting out a new binding attachment on the McCormick binder; an improvement has been made also on the reel. And, during the last two years we have had used, had out, several hundred machines for tests, having new frames, and quite a number of small improvements.

Q. Has the McCormick machine been made lighter, or not?

A. That has been reduced in weight a little; I can't say how much, within the last two or three years, I don't think they are putting them out exclusively yet, the reduced machine. Although the reduction is not considerable, whatever it may be. It was one

172 of our heaviest machines, and a little heavier than necessary.

You must understand that there are means, by the weight of the machine to make the wheels turn around, you can't cut grain unless your master wheel turns around; and if you have too much weight on that, more than is necessary to make it turn around and make the machine go, you have too heavy a load to carry; that is why we felt inclined to reduce the McCormick a little.

Q. Did that make it a better machine or not?

A. Certainly it is better. To illustrate that, to make that clear, we may treat a machine as two things, something on wheels that is to be drawn over the stubble field; and if it is too heavy the horses have too much to pull, and if it is too light the machine won't do the work, you might say we are between the devil and the ditch; if we get our machine too heavy the farmer won't buy them; and if we get them too light they will not buy them. Fifteen hundred

pounds is a very good weight for a machine, if the mechanical work is properly done.

Q. How is the mechanical work in these machines since 1902 compared with what they were before the consolidation?

A. Well, before the consolidation, it was, you might say, dog eat dog. It was a question of keeping the machines good enough to do the farmers' work, but we had to keep expenses down. Since the consolidation, we have been able to take more pains in manufacturing, and, while before 1902 we had processes of inspection, systems of inspection; but since that time, our so-called systems have

173 become systems in fact, and the attention given to inspection has been three or four fold. Now, when I say inspecting, I don't mean someone comes and casually looks over the machine to see it was all right, but I mean by this, that workmen go to the benches perhaps with careful tests, and test everything in particular to see that it is absolutely right; every part in the harvester is inspected that way, the expense has been great.

Q. What about the inspection made before the machine is built compared with what it was then?

A. We didn't inspect it much; we used to buy steel, and steel was steel with us; but now it is very different. There is a multiplicity of steels; for instance your mower bars are made of forty parts steel; in order that you gentlemen may understand, and the Court, what I mean by that, is this, you all know what a mower bar is—the finger beam mustn't bend; you know it must not break; and you know that it must not be so hard that we cannot drill it, so we specify when we order stock for finger beams, that it shall be, say forty point forty per cent to one per cent carbon. In that case the steel is easy enough for us to drill holes in; and yet so that your farmers can't bend it, if you try very hard; then we will say, take the couple frame of the mowing machine, it requires no drilling; and must be very stiff, and we state a higher steel, one hundred and seventy per cent. Some qualities of steel are very low and phosphorous. If

I was asked how many varieties of steel we buy I would have 174 to say I don't know; and I do not; there is over twenty.

Q. Is all of that inspected before it is bought, or put into the machine?

A. It is delivered at the factories, and then samples from every piece—and I shall have to explain what I mean when I say a sample from every batch is taken and holes drilled into it, and the chips go to the chemist's laboratories, where each factory has three or four chemists employed, and tests are made, specific tests; and that is true with everything that comes to the factory; lumber, and the little brass we use; everything we use is inspected by these chemists. One thing I hav-n't answered that perhaps your question calls for, in a room twice the size of this, at each factory is a place where some half dozen to a dozen men are continuously putting up machines, and testing them by power tests, by a dynamometer, to see that everything is right; and that — the inspection up to that time, and the inspection of the parts has been perfect. You may say that is the

final test. Those portions are taken from the warehouse where they are to be shaped and brought back and put through the final test.

Q. Was there any such inspection as that before the combination?

A. We inspected at several things; didn't do much; perhaps I should explain. During the last ten years there has been a great effort on our part to make the parts with greater accuracy than before, so that each piece can go into the hands of the farmer, 175 & 176 and he can apply them without an expert going out and filing and fitting and paying a livery bill of three or four dollars, and making expenses, which is largely unnecessary.

Q. What kind of an experimental station is maintained at the factories which design and perfect all of these parts of this machinery?

A. At every factory they have an extensive department; I don't know how many men are employed; there has been sixty men, probably seventy men in our factory, for—probably forty in our factory in and about Chicago, their whole efforts being the designing of improvements, and the perfecting of our machines, in so far as we can. That is done at a very great expense; I don't think as much as a half million a year, but it amounts up considerably about three hundred and fifty thousand dollars.

Q. Do they maintain one at each factory?

A. That has nothing to do with the factories; it — absolutely independent of the factory and manufacturing department. They can not say we want this thing or that thing so designed, so that it can be made cheaper. That is the matter of the New York Committee has to do with. There are five of us, whose duty it is to have general oversight of any improvement, little or large that comes before us, and if we think it may be wise to adopt it, we so recommend; and if wise to adopt, we recommend it, and go to the fields and witness the test. It is the intention that nothing be done without our knowledge, at least and usually without our acquisition.

177 Q. What is the purpose of all of this inspection, designing, and engineering of your Committee and yourself?

A. To make our machines better. Where we used to be striving to make them cheaper, we strive now to make them better, and we have made them better from year to year.

Q. When you say you have made the machines better, what do you mean by that?

A. I mean this. Although one may say they can take a machine of twenty years *old* and do as good work as with the machine of to-day; I say yes, in some conditions, or in good conditions, certainly; but, we must make our machines for all conditions; and I am quite sure that the people of one locality cannot understand what all of those conditions are. You have in your ravines, where many cut grain, fluffy, high, and short grass and so forth, and your soil conditions may be good, and you do not have the conditions they do, say in some of the Northern States; Rye eight feet high, and wheat that will go fifty bushels to the acre, often as high as fifty-five. It would be useless for one to try to explain those things to one who has not traveled the country over, and other countries.

The multitude of conditions we have to contend with; and there permit me to say that is one of the greatest problems and greatest expenses incident to the manufacture, and that is that we must make our machines so that they will work as good as possible in all conditions of grain and all conditions of soil. We must make machines that will work in Scotland, where it rains every day in the year, and where they cut rye grass green, and bind it some how; and so it will work in regions where they have to scrape the ground to get the grain; and numerous other conditions.

178 Q. Take the Deering Machine, something has been said about an increase in the weight of that machine, since 1902, explain that to the jury?

A. The amount it has increased in weight, I cannot say, because it is ten years since I had to do with the details of the Deering; I can't tell how much wider the canvasses have been made; how much more malleable has been put in this, than others. I can speak in a general way, my recollection is however, that the weight is now about fifteen hundred pounds; maybe fourteen seventy-five. But it is a little matter that needs explanation, one man will go and weigh a machine, and say sixteen hundred; the next man will go and weigh it, and say fourteen hundred. Why that difference? One takes into account the machine with the transporting trucks, three or four horse equalizers; the other one weighs them, perhaps as it would go in the field, without those things; so when you hear men talk about the weight of the machine, they don't know anything about it unless they tell exactly what was weighed. They may tell us the machine weighs seventeen hundred pounds; shipping weight, possibly with the crate and so forth.

Q. Was there any necessity for increased strength in the Deering machine at that point?

179 A. Yes, sir. We had our machine too light; they were so light, that when they would get into very heavy oats, and down oats, and green in spots, that, as all farmers know is inducive to blood-sweating as it were; we found we had it so the wheel wouldn't turn around and it would become choked too often; and it was necessary to increase the weight a little. But, not only that, we found, I admit we have been slow to learn, that the elevators of the machines can be further apart, and yet do the work in the light thin grain, I spoke of; to place them further apart, to widen the elevators, the upper canvass of the elevator, was raised a little, while it would also work in the special tall rye, and tall oats particularly in this Country and France; we must necessarily add to it, had to add weight in order to get our machines to suit all climates, and such as this year, in the West, where there has been an extreme drouth; we had not only to tilt it down, but it necessitated the lengthening of the saddle, which holds the wheel there as we find them, and so on; and we adopted the solid dividers, which increased the weight a little; and added a little here and there, and increased the durability, and particularly the efficiency of the machine, and I think I am safe in saying the efficiency of our machines is greater than it was ever before; I do not mean in Kentucky or Tennessee;

but the world over. We cannot make machines for special localities, special geographical localities; farmers wouldn't buy them.

180 Q. Take the machines you have on the market and the machines — is it or not more efficient than it was before 1902?

A. Yes, sir; it is.

Q. The independent companies, before the combination, was not making any machines for any special locality?

A. No, sir; I think not, except the Adrian Spratt Company of New York. They do no business in this Country, but on the contrary, do a foreign business; introducing their machines in England and Germany, and for those countries, made a machine entirely different from anything that anyone probably has seen here.

Q. The machines produced, and the work that comes from the International Harvester Company; state whether or not the material is better than it was before 1902?

A. It is better and the product is better, because that is better; we make those tests; all steel, wood, and everything is tested in order to check up the manufacturers; and we order special grades of steel and lumber and so forth.

Q. What is the real point to be attained in the production of the perfected machine, state whether or not it is the measurement of efficiency, and the—that is whether it is a maximum of efficiency and a minimum of draft.

A. A maximum of efficiency and a minimum of draft. The machine might be loaded down with cast iron, and heavy bars of steel until it would become an unnecessarily heavy load, or road cart; by cart, I mean the machine would kill the farmer's horse, and he wouldn't buy it; no farmer don't want to haul an unnecessary load; but there must be weight on that drive wheel, or

181 the machine will do nothing. Now in order to make—to reduce the friction to the minimum, requires special steel for all of those axles, steel furnished particularly for those places where it wears, it supersedes the use of rolling and ball bearings; by selecting especially high steel for the shafts and so forth we reduce the friction very materially. A matter of importance, one might ask me why you cannot arm the wheels with lugs deep enough to grip the ground and make it turn around with less weight; that would be a very natural question; if they are too deep they fill up with the earth and mud and slip more than they did before; that means we cannot arm our wheels too much nor too little. The only way to make our wheels efficient is to choose a lug and use such as will fit as many conditions as possible, then make our machines run as lightly as possible, the mechanism turn as easily as possible.

Q. State whether or not that kind of material costs more on the market than it formerly did, 1902, when they didn't make any particular selection of it?

A. It costs more. How much more? I cannot say; I have nothing to do with that. Our men are there to consider the matters of quality; and when the question of costs comes up; for instance

maybe there will be one or two or three devices or patents performing a certain function, some improvement on the machine, maybe three or four of them, well the question comes up, which will be the most efficient consistent with the cost. Take the cost
 182 into consideration perhaps, we find this device will work equally well and then the question would be one of cost. Then we call the purchasing department and say, well what do you pay for inch round bars, forty *carbine*; so much; what do you pay for so and so? So much. I say, it only comes to that incidentally; the variation in the cost of all of the different grades of steel.

Q. Which predominates in your Committee, the question of cost of the material, or the question of efficiency?

A. I think I am charged with being the greatest crank in the matter of efficiency. That is our business, we are responsible to the management for the perfect operation of the machine.

Q. State whether or not all of the basic patents, which formerly entered into the construction of these machines have expired?

A. They have been out, most of them, many years ago. I can go over them in detail if you wish?

Q. I don't want you to go over them?

A. The basic patents are all out and most of them have been out for years and years.

Q. The Machine can be copied by any manufacturing plant?

A. There are some little details that amount to nothing that are covered by patents which we hold and which is covered by patents, which the other Manufacturing Companies don't. They do not effect the cost or operation of the machine.

Q. Are any of your machines being copied by any other manufacturing plants, and being put on the market?

183 A. Yes, sir; the Minnesota State Concern; it is a State Prison Concern, they are making a machine which I have looked over several times and found no element of ours infringed on. The Johnson Harvester infringe- none on the mowers or harvesters; so with the Ackme and Walter A. Wood; and so with the Independent Company, the John Deer Plow Company make a harvesting machine, made a few, it is, judging from the cuts of the machine, there is two little patents of ours infringed on; I don't know why they use them; they don't need to, because there are many devices performing the same functions that are public property.

Q. I am talking about the general construction of the machine; there are many machines being made similar to your machine, and on the market?

A. All I have mentioned.

Q. Are they in competition with the product now being sold by the International Harvester Company of America?

A. All of them. I am speaking about the machines being made in the United States, of course; there are factories in Canada.

Q. You don't know anything specifically about the increase in the price of labor?

A. Only I know it has gone up.

Q. How much, you don't know?

A. No, not in my own business I don't know.

183½ Cross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. What is your official position, Mr. Steward, your official title?

A. Mechanical Engineer and patent expert.

Q. For whom?

A. For the International Harvester Company.

Q. Are you a stock-holder in that company?

A. Yes, sir; in the International Harvester Company I am.

Q. What is the capital stock of the International Harvester Company?

A. I only know from the reports.

Q. Well that is the only way one could know, what is it?

Counsel for defendant objected to the foregoing question, but the court overruled the objection, to which counsel for defendant excepted.

Q. What is the capital stock?

A. About \$120,000.00.

Q. Could you tell who owns the most of that stock?

A. I don't know, have no idea.

Q. Have you no idea who any of the heavy owners are, outside of yourself?

A. I am not a heavy owner.

184 Q. Well, who are they?

A. The McCormicks and Deerings, I suppose; no doubt.

Q. Who else is among the heaviest owners?

A. I don't know.

Q. Any New Yorkers?

Counsel for defendant objected to the foregoing question and the court sustained the objection, to which counsel for plaintiff excepted.

Q. Is any Gentleman in Cleveland, Ohio, a heavy stock holder in that company?

Counsel for defendant objected to the foregoing question and the court sustained the objection, to which counsel for plaintiff excepted and made the following avowal; If the witness was permitted to answer, he would state that John D. Rockefeller, whose address is Cleveland, Ohio, is a heavy stock holder in that company.

Q. Who sells the product of the International Harvester Company?

A. The International Harvester Company of America.

Q. The International Harvester Company of America is the sales or selling agent for the International Harvester Company?

A. I don't think so.

185 Q. It sells all of its product?

A. Yes, sir, it buys the product of the International Har-

vester Company, and the products of other manufacturing concerns; it is not limited to our factory; our output.

Q. It buys all of your output?

A. I don't think of any exception now; I think that is the truth.

Q. How long has it been so doing?

A. Since August, 1902; August 12th.

Q. When was the International Harvester Company incorporated?

A. 1902, August.

Q. And the International Harvester Company of America?

A. Not long after; I don't know when.

Q. Was it not incorporated, to refresh your recollection, in September; September 12th, 1902, less than a month after the incorporation of the International Harvester Company?

A. That, I think is true. At any rate, at the time when the International Harvester Company was doing nothing; that is to say, its factories were all closed down, putting out no machinery; they were making repairs and so forth, and when the manufacture began after the shutdown, as we term it, for repairs, the factories were manufacturing for the International Harvester Company of America, and have so done every since.

186 Q. What factories do you speak of, as being shut down?

A. The McCormick, Deering, Champion, Plano and Milwaukee, at that time.

Q. When was the combination between those various companies formed?

A. I don't think there was any combination formed.

Q. When did those companies cease to exist as independent companies?

A. The 12th of August, 1902.

Q. All of their factories were closed?

A. Closed pending the making of inventories, when they were sold, or to be sold—In fact, sold to the International Harvester Company.

Q. And as soon as the factories were opened the International Harvester Company of America assumed control of the whole output; and has been controlling and selling the output from that day to this good hour?

A. Yes, sir; practically so, as I understand it.

Q. Where are those factories?

A. The McCormick and Deering and Plano are in Chicago; the Milwaukee is at Milwaukee, Wisconsin; and the Champion is at Springfield, Ohio.

Q. Are all of those machines manufactured in the same place as they were manufactured before the consolidation?

A. They are with this exception; the Milwaukee factory is now devoted exclusively to the manufacture of engines and cream separators.

187 Q. Where are the machines now manufactured which were formerly manufactured at Milwaukee by the Milwaukee Machine Company, the mowers and binders?

A. My answer, when completed will make that known.

Q. I would like for you to answer that question right now, the court will tell you when not to answer?

Mr. STRAUS: We object to counsel interrupting the witness.

A. The mowers and binders and rakes are made at the McCormick works.

Q. Where are they?

A. In Chicago.

Q. Are all of the machines; that is the same character of machinery manufactured at Columbus, Ohio, now as was manufactured there before the combination?

A. I know of no machinery being manufactured at Columbus, Ohio.

Q. Springfield, I mean?

A. Yes, sir; and much more.

Q. Did your company take charge of the Southwestern Implement works at Louisville?

A. I never heard of that company?

Q. Never heard of that small a company; I suppose?

A. I think I would have heard of it.

Q. Don't you know that that was taken over by your Company about two years ago?

Counsel for defendant objected to the foregoing question; no ruling.

188 A. (No answer.)

Q. You don't know whether that is true or not?

A. I don't know that it is not true.

Q. Mr. Steward, you say you live in Chicago?

A. Yes, sir.

Q. When did you come here?

A. Last night.

Q. Under any process of this Court?

A. No, sir.

Q. By whose directions?

A. Mr. McMath; I was sent by Mr. McMath.

Q. Who is he?

A. Of our Law Department.

Q. What position does he hold in your law department?

A. He is consulting Counsel, I think that term applies better than anything else. He has charge of the cases. Court cases.

Q. The settlement of litigation?

A. I don't know about that; I don't know whether he had authority to settle them or not. I am not in the law department.

Q. You came at the request of Mr. McMath, to testify for the defendant in this case?

A. To testify to such facts as I was able to, for the parties interested in the case.

Q. Now, Mr. Steward, as I understand you, some fifty years of

your life has been devoted to the invention and supervision and construction of harvesting binders and machinery?

189 A. Yes, sir; I will have to modify that: not factory manufacturing, but the developing of machinery.

Q. Most of that time has been devoted to the Deering Harvesting Company?

A. Yes, sir.

Q. And as you said yourself, you are one of the assets turned over by the Deering Company to the International Harvester Company of America?

A. Yes, sir; I say that to my friends.

Q. Mr. Steward, the Deering machine was built, or began— The manufacturing of it began before or after the McCormick?

A. The McCormick began many years earlier.

Q. The McCormick was a pioneer Company?

A. As compared with us, yes, sir.

Q. The McCormick, of course owns quite a number of patents upon the material parts of the McCormick, as well as the Deering and all of the various machines, or they did in the start?

A. Yes, sir at the start.

Q. And those patents continued during the period allowed by law, seventeen years?

A. Yes, sir; seventeen years.

Q. All of those patents have ceased, or expired?

A. Yes, sir.

Q. And practically now anyone can take one of the machines and manufacture it without fear of infringement?

A. Yes, sir.

190 Q. No royalties are paid to inventors or anything of that kind now; that is practically none by any of them?

A. We pay no royalties.

Q. I am speaking of the manufacturers you represent, the Plano, Deering, Milwaukee, McCormick, and the Champion?

A. They are all one manufacturer.

Q. Those machines were all crudely constructed in the start; out of iron, the substantial parts, and wood; and were constructed rather crudely?

A. Yes, sir.

Q. That is true all of the machines were?

A. Yes, sir.

Q. And as time went on those interested in that business became more efficient in the construction of machinery, and were able to do away with several of the defects, and were able to put other things on that were some benefit, and find where some benefits could be made, and they gradually became more perfect?

A. Yes, sir.

Q. That continued, and continues, up to the present time?

A. Not without effort.

Q. It required constant effort and a great deal of study?

A. Yes, sir.

Q. That is true of the machines your company now represents?

A. Yes, sir.

Q. What were the McCormick and Deerings worth at the beginning, pretty considerable prices, were they not?

191 Counsel for defendant objected to the foregoing question, but the court overruled the objection, to which counsel for defendant excepted.

A. I do not know. So far as I know, the history of the McCormicks, they were not; and while Mr. Deering was worth some money; when he bought an interest in the concern and became interested in it, he was as poor as Job's turkey.

Q. You did not understand my question; the machines, I speak of at the beginning were sold at a pretty good price as compared with the present price?

A. Undoubtedly.

Q. The machines, at the beginning sold for three or four times as much as they are selling for now?

A. No, sir; while the cost and conditions of manufacturing them was more, I am speaking in a general way only, so far as my recollection is concerned, when our machine cost us twice as much as it does now, we didn't get twice as much, although I made that statement in talking with a gentleman last night, which may come out here, I erred.

Q. Did you make a statement last night?

A. Just talking.

Q. To whom?

A. Several.

Q. In connection with this case?

A. Past history.

Q. Isn't it true that in the early years the Deering and McCormick sold on the market for three times the price of those
192 machines today?

A. No, sir.

Q. They did sell at a considerably higher price than today?

A. Yes, sir.

Q. More than twice as much?

A. The McCormick mower and Deering mower and binder—

Q. Sold for more than twice as much?

A. They were much higher.

Q. Don't you know that from your general knowledge?

A. No, I know nothing from general knowledge; what I testify to will be from specific knowledge; I can give you my general idea.

Q. I want to know, when you first became interested or entered with the Deering Company, what were binders and mowers selling for?

A. We didn't make mowers for a long time; Binders sold for perhaps twice as much?

Q. What did the McCormick sell for?

A. That I don't know.

Q. They were in competition against you?

A. Yes, sir; but I didn't have anything to do with the competition except to make a machine that would stand the competition.

Q. The Deering continued to be improved under your supervision and others?

A. Yes, sir.

Q. Various improvements were made?

193 A. Yes, sir.

Q. And the patents expired when?

A. They expired like death; every day.

Q. When did the last expire, practically?

A. Patents expired on that machine—If you will specify what patent you refer to?

A. Didn't you say the patents on that machine expired in 1896?

A. I don't think so.

Q. Didn't you say, in answer to a question asked of you by counsel for defendant in this case, that all of the patents substantially all on this machine had long since expired?

A. Yes, sir.

Q. When did they expire?

A. Take the matter of the patent for instance of 1879, that expired, of course, in 1896. Then take the Deering knottor, as now made, that expired in 1901. The adjustable reel, that expired in 1900. The reel used on the McCormick, that was taken out in 1876, and expired in 1893, of course.

Q. Now then, Mr. Steward, notwithstanding the fact that for a period of time those machines were covered with patents and the prices were up high, and that they were continually being improved, the prices of the machines come down more than one hundred per cent from the first time they were put on the market?

A. Yes, sir; quite likely.

194 Q. Now Mr. Steward, where are the machines manufactured by the International Harvester Company, and sold or transferred in some way, passing under the control of the International Harvester Company of America, sold?

A. Of course, they are principally sold to the International Harvester Company of America; if you mean what Countries——

Q. Yes, sir.

A. In all of the grain growing countries of the world, except for instance, India and China, where labor is so cheap that the raisers of grain cannot afford to buy them.

Q. They are sold all over the known and civilized world, except in China and Japan?

A. No; there are sections of Africa, and the largest part of Mexico, and the Northern portion of North America, where they are not sold.

Q. They are sold in the greater part of South America?

A. Yes, sir.

Q. In Canada?

A. Yes, sir.

Q. In Russia?

A. Yes, sir.

Q. Germany?

A. Yes, sir.

Q. France?

A. Yes, sir.

Q. England?

A. Yes, sir.

195 Q. Scotland?

A. Yes, sir.

Q. Cuba?

A. No, sir.

Q. Sold in Mexico to some extent?

A. A very few.

Q. Central America?

A. Hardly.

Q. Any portion of Africa?

A. Yes, sir; I only know this, of course, from general reports; In the Southern part of Africa, they are not; the States, I don't know just which ones.

Q. Your Company endeavors as far as possible to so construct the machinery, binders and mowers, that it can be used advantageously in all of those countries, is that true, the same character of binder and the same character of mower?

A. Yes, sir; with the explanatory part of your question, I think that is correct.

Q. A machine, for instance to work properly in the State of Kentucky might not do the work properly in Scotland?

A. That is true.

Q. Or in Asia Minor?

A. Yes, sir.

Q. Therefore, you attempt to make and compose a machine that will do the work in all of the Countries?

A. Yes, sir.

196 Q. You spoke of the warring elements, in answer to some question propounded to you by counsel for defendant, referring to the time immediately before this combination, what warring elements did you refer to?

A. The concerns which were fighting each other so hard that neither could exert itself to its greatest ability to make the machinery better and more perfect.

Q. What companies were they, name them all or some of them?

A. The Johnson Harvester Company, the Walter A. Wood Mower and Reaping Machine Company; the Harvester King Company; the Milwaukee Harvester Company; the Minnesota Harvesting Company; the B. F. Osborne Company; the Adrian Spratt Company.

Q. The Deering Company?

A. Yes, sir.

Q. The McCormick Company?

A. Yes, sir.

Q. The Champion, in that competition?

A. Yes, sir; I think I mentioned them.

Q. Did you mention one make of the Milwaukee?

A. I mentioned the Milwaukee in my first answer.

Q. Did you mention the Osborne?

A. Yes, sir.

Q. Did you mention the Plano?

A. Excuse me; I forgot that.

Q. Is it not true, Mr. Steward, that you mentioned every Harvester Company except the companies forming your corporation, didn't you?

197 A. I don't think so, I didn't intend to.

Q. Certainly not; What happened when those warring elements met at the time you spoke of, August, 1902, immediately prior thereto?

A. It was dog eat dog.

Q. What happened when they come together?

A. You mean at trials.

Q. I mean when they all came to an agreement or understanding?

A. They never did.

Q. Never did?

A. Not that I know of.

Q. When their factories were shut down?

A. They came together with the International Harvester Company, and it formed and bought out the various —. As I have named the five concerns several times.

Q. Six, isn't it; the Osborne was in it, wasn't it?

A. No, sir.

Q. When did the Osborne get into it?

A. Later; in 1905.

Q. When and how did it get into it?

A. We bought it out.

Q. Was it a pretty active competitor?

A. Not a very strong competitor; they were doing very well.

A. And then you bought them out?

198 A. Yes, sir; I don't think we bought their business, their accounts.

Q. Just bought the factory?

A. Yes, sir.

Q. To prevent it from running any longer independently?

A. Yes, sir.

Q. You started in with the Plano, McCormick, Milwaukee, Champion, and Deering; started in with the original big five, and they got together and were taken over by the International Harvester Company?

A. The International Harvester Company was organized and bought them out?

Q. Bought those five companies?

A. Yes, sir.

Q. And a little later on the Osborne was obstreperous and it was bought out?

A. It was bought.

Q. And then the warring elements became reconciled?

A. They ceased to exist.

Q. Ceased to exist?

A. Yes, sir.

Q. And competition not being so strenuous then, you had more time to devote to the betterment of the machines?

A. We had more incentive to better our machine.

Q. More incentive?

A. Yes, sir.

Q. I understand you to mean the less competition a person has, the more incentive he has to do better work?

199 A. You are calling for my judgment, and not for facts.

Q. That is what I want; I have the highest regard for your judgment.

A. No, I wouldn't put it that way. The New Company wanted to make its machines better; It wanted the patronage, of the public, and of course, if it didn't it wouldn't get it; and the best way to get the patronage of the public is to make good goods, and we have tried, and are trying yet to make good goods, and to a large extent; regardless of expense in doing so; and are compelling the other manufacturers to do better work.

Q. About how much; what per cent of the machinery is sold in the United States, as far as your knowledge and information goes, and was sold by the six companies which are now consolidated, and were bought out by the International Harvester Company, as you put it?

A. I should guess; and it is merely a guess, that is that it has a large per cent; but that is it don't sell as much as they sold; and I can give my reasons if you want them

Q. I will ask you for your reasons later on; at the time of the consolidation, about what per cent did they sell?

A. It would be merely guess work.

Q. Give your best judgment from your knowledge of it?

A. Perhaps forty per cent—I mean sixty per cent.

Q. Wasn't it nearer seventy-five per cent?

A. Perhaps your guess is nearer than mine.

Q. Now then, as I understand you, there was a bitter competition between those companies at that time?

200 A. Yes, sir.

Q. The competition, after this consolidation, as between the companies ceased, because the companies no longer existed?

A. It ceased as far as the International Harvester Company was concerned; the International Harvester Company of America now has, I understand, competition in the various lines, for instance the old Deering agents and the old McCormick agents, and the Old Osborne agents, are competing very strongly with each other; and the International Harvester Company of America require us, absolutely require us to keep the McCormick line substantially as it was, which we must do, but we must improve them whenever and wherever we can.

Q. And isn't it a fact that the competition is now between the agents of the different parts of the International Harvester Company of America, and not between the International Harvester Company and any particular company?

A. The International Harvester Company has no agents; you

must not confuse the International Harvester Company of America with the International Harvester Company.

Q. Submitting to your correction, I now ask you, isn't the competition between the agents of the International Harvester Company of America, that is the agents for the Plano, the Deering and so forth, competing with each other?

A. I think so.

Q. But the International Harvester Company of America get the same price for all of its machines?

201 A. I don't know.

Q. Don't you know from your knowledge that the price of mowers and binders are fixed and are the same?

A. I know absolutely nothing about the sales of the machines.

Q. Absolutely nothing?

A. I pay no attention to the sales; but my business is in other lines.

Q. Entirely so?

A. Yes, sir.

Q. What were your lines of work before you became connected with this consolidation?

A. Inventing and perfecting.

Q. For whom?

A. The Deering.

Q. The other companies had the same character of men, that is of course, inventors and perfectors, of course, not as efficient as yourself?

A. Yes, sir.

Q. You had a laboratory and chemical department, your Deering Company?

A. It didn't amount to much.

Q. Do you know with reference to the other companies?

A. I don't know.

Q. Don't know how many inventors they had?

A. I don't know; I was acquainted—

Q. How many inventors besides yourself did the Deering Company have before the consolidation?

202 A. A half a dozen.

Q. How many did the McCormick have?

A. I don't know.

Q. Have you any idea?

A. I know of two.

Q. How many inventors did they have—

A. I don't know.

Q. How many inventors have you now, all together?

A. I have no means of knowing, probably fifty.

Q. You had six or eight before the consolidation, or combination?

A. Yes, sir, I don't think they had that many.

Q. You said six or eight?

A. I said six.

Q. Who are, to a great extent, devoted to the purpose of making the machinery fit better, so when a machine is sent out to a farmer.

or if he breaks a piece and has to have repairs, it can be sent to him and inserted by him, the piece, and saves the trouble and annoyance to him of having an expert bothering around his house and farm?

A. To a larger extent than before. I am speaking, of course, of an intelligent farmer; some farmers couldn't repair a wheel barrow.

Q. And you necessarily have fewer experts than before?

A. Yes, sir, we have fewer.

Q. To what extent have you reduced your expense on the expert line?

A. I have no means of knowing.

203 Q. Have you any idea how many machines are sold in the United States in a year?

A. What kind of machines.

Q. Binders, by those various companies.

A. I should say maybe one hundred and fifty thousand.

Q. No more than that?

A. Possibly more than that.

Q. How many mowers?

A. About two hundred thousand?

Q. Don't you think there are more than fifty thousand more mowers sold than binders in the United States in a year?

A. That is, more difference. I can't state for sure; there was not many binders sold this year in the middle West, there was a failure.

Q. (And further the witness sayeth not.)

WILLIAM QUIGGINS, having been called as a witness on behalf of the defendant, and having been first duly sworn, and being examined, testified as follows, to-wit:

Direct examination.

By MR. RUTLEDGE, of counsel for Defendant:

Q. Please state your name and place of residence to the jury?

A. William Quiggins, and I live at Caneyville.

204 Q. What is your business?

A. I am in the farming business and lumber business.

Q. How long have you been engaged in the lumber business?

A. I have been buying and shipping lumber about twenty years.

Q. What character of lumber do you deal in, Mr. Quiggins?

A. I deal in definition stuff mostly, or principally.

Q. What do you mean by definition stuff?

A. I mean single trees and double trees; and oak pitman rods, and rollers for harvesters.

Q. Do you sell any of your material to the International Harvester Company?

A. Yes, sir.

Q. How long have you been selling to that company?

A. Since 1905.

Q. How much material do you ship to the International Harvester Company of America, during say the course of a year?

A. In 1896 and 1897, I shipped anywhere from fifty to sixty car loads.

Q. You mean in 1906 and 1907?

A. Yes, sir.

Q. Fifty or sixty loads?

A. Yes, sir.

Q. Have you been selling the same character of lumber before that, Mr. Quiggins, to other people?

A. No, not the same character of lumber.

205 Q. You have continued to sell this lumber to the International Harvester Company of America, since 1905?

A. Yes, sir.

Q. You say you were engaged in the business some ten or fifteen years before you began selling lumber to the International Harvester Company?

A. Yes, sir; except at periods.

Q. Can you state to the jury whether or not there has been an increase or decrease in the price of the lumber you ship to the International Harvester Company of America, since the year 1905?

A. Yes, sir; I got an advance in 1806; 1906, I mean, and 1907, the second year after I commenced, and the third year.

Q. The second and third years after you commenced?

A. Yes, sir.

Q. Has there been any increase since those years?

A. Yes, sir.

Q. Has the increase been steady, forward, or not, state to the jury?

A. How was that?

Q. Has the increase been a steady increase in those years or not?

A. We have got three advances; got an increase in price in 1906, and 1907, and this present year we got an increase.

Q. What was the aggregate amount of those three separate increases?

206 A. Lumber that sold at Thirty Dollars then, I got thirty five in 1907; and in 1907, I got forty dollars for the poplar squares to make the rollers.

Q. Was there any other increase?

A. In 1907, we got an increase on the white Hickory, we got then sixty dollars, and then they paid me seventy dollars, that was for the second growth white Hickory.

Q. What has been the aggregate increase in the price, from 1905, up to the present time?

A. From seventeen to twenty-five per cent.

Q. From seventeen to twenty five per cent?

A. Yes, sir.

Q. This is the lumber shipped to the International Harvester Company for use in their machines?

A. Yes, sir.

Q. Where is your factory, your lumber yards located?

A. I have one at Kuttawa, Lyon County, and one at Caneyville, Grayson county.

Q. Are they both on the I. C. road?

A. Yes, sir; both on the I. C. Road.

Cross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. How long did you say you had been engaged in that business?

A. With the International People.

207 Q. In the business?

A. About twenty years; but I have been in with the International People——

Q. Are you now the agent for the International?

A. No, sir.

Q. Do you work and sell for them independently?

A. I buy the material and cut the timber and sell to them.

Q. You cut it the material size required by them?

A. They give me a bill to cut on, and I take the timber in the rough, and cut it to suit their demands.

Q. You spoke of the poplar that is used for rollers?

A. That is cut three and a quarter by three and a quarter and forty eight inches long; or four by four some of it.

Q. What do you mean by rollers?

A. Cut in squares, you know, for the rollers in the Harvesting machines.

Q. What are the rollers?

A. The pieces in the binders, the rollers.

Q. They are only used in Binders?

A. That is all, so I am told.

Q. About how long?

A. Forty eight inches.

Q. In length.

A. Yes, sir.

Q. How many pieces do they use in one binder?

A. I couldn't tell you.

208 Q. Over one?

A. More than one.

Q. You don't know?

A. No, sir.

Q. They are forty eight inches in length; four feet in length?

A. Yes, sir.

Q. How wide?

A. Four by four; and three and a quarter by three and a quarter.

Q. Three and a quarter inches?

A. That is one size and cut one size four by four; forty eight inches they are all the same length.

Q. How many feet in one of those pieces?

A. Six feet in one piece and four feet in the other, the way they square out, many of them.

Q. How much was that increase?

A. In 1907 what I got thirty dollars for in 1906, I got thirty-five for in 1907; and I got a contract with the International People for forty dollars.

Q. Is that contract going on?

A. No, sir.

Q. What contract did you have last year?

A. Contract for pitman rods and single trees and double trees.

Q. When did you stop the poplar?

A. They wrote, about a year ago that they were well stocked on poplar, and to discontinue shipping for a while.

209 Q. And you hav-n't shipped any since that time?

A. No, sir; no poplar.

Q. The poplar prices, your contract continued from 1905 to what time?

A. 1907.

Q. And then you stopped shipping?

A. Yes, sir.

Q. From 1905 to 1907, for those two years on the Poplar you sent, you got five dollars one year and five dollars the next, increase?

A. Yes, sir.

Q. You didn't say in answer to the question asked you by counsel for defendant, Mr. Quiggins, that you had stopped shipping them lumber, when the question was asked what you were getting?

A. He didn't ask me.

Q. I am asking you the question; he asked you on direct examination what you were getting, and what the increase was in price, and you said in 1906 five dollars and in 1907, five dollars, and you didn't say anything then about stopping?

A. I haven't stopped shipping hickory.

Q. I am talking about Poplar.

A. Oh! yes, sir.

Q. You never did say anything about stopping?

A. He didn't ask me.

Q. You only answer such questions as are asked you then, I suppose?

210 Counsel for defendant objected to the foregoing question.
No ruling.

A. (No answer.)

Q. How much hickory do you send—When did you begin shipping hickory?

A. 1905.

Q. How long did you continue?

A. Since then.

Q. In the same quantities, or greater or less?

A. Sometimes greater and sometimes less.

Q. What prices were you getting in 1905?

A. I got thirty-five dollars.

Q. When was the first increase?

A. Increase in 1906 to thirty-five dollars.

Q. When was the next increase?

A. 1907.

Q. How much was that?

A. The increase in poplar?

Q. I am talking about hickory.

A. The hickory advanced about ten dollars.

Q. When?

A. In 1907.

Q. You mean it advanced five dollars, from thirty to forty-five dollars?

A. To forty.

Q. You said it was raised five dollars in 1905?

A. Yes, sir.

211 Q. And another raise in 1907?

A. Yes, sir.

Q. Makes ten dollars.

A. Yes, sir.

Q. You are still supplying the hickory?

A. Yes, sir.

Q. Any raise lately?

A. Here lately.

Q. When.

A. This year.

Q. What time this year?

A. In June, I believe.

Q. In June?

A. Yes, sir.

Q. You hav-n't filled that?

A. No, sir.

Q. Hav-n't fill- the contract?

A. No, sir.

Q. What size order do you ship to that company?

A. For single trees one and three quarter by two and a quarter;
double trees one and three quarters by three and three quarters.

Q. Inches.

A. Yes, sir.

Q. One foot and a quarter long?

A. No, sir.

Q. How long?

A. The double trees are three and a half feet, and the single trees are two and a half.

212 Q. One double tree is used on a mower?

A. Yes, sir; I suppose so.

Q. One double tree on a binder?

A. Yes, sir.

Q. How much hickory would be used in a binder or mower?

A. I don't know.

Q. On the double tree?

A. About seven feet in the single and double trees.

Q. I am speaking about the double trees?

A. Two and a fraction feet.

Q. For a single tree—Is a single tree used with single harness or double harness?

A. I don't know what they use the single tree for.

Q. Do you use a single tree on a binder?

A. (No answer.)

Q. How long is that?

A. The double tree is two and a half and the single tree is two and a half.

Q. There would be about six feet of hickory in either a binder or mower?

A. Yes, sir; between six or seven.

Q. What other poplar and hickory have you shipped?

A. That is all.

Q. You shipped them at the prices stated and the character stated?

A. Yes, sir.

Q. You don't know whether they are actually using the single trees and double trees or not?

213 A. That is what the bill calls for.

Q. You don't know what they use it for?

A. No, sir.

Redirect examination.

By Mr. RUTLEDGE, of counsel for defendant:

Q. The bill you received from them calls for that material?

A. Yes, sir; single and double trees.

Q. You shipped this material to them, the hickory for single trees and double trees and pitman rods every year since you first began working with them?

A. Yes, sir.

Q. Working for them?

A. Yes, sir.

(And further the witness sayeth not.)

The deposition of William B. Edgar, was here read by Mr. Rutledge, of counsel for defendant on behalf of defendant. The court sustained the exceptions to questions numbers 19, 20 and 21, and the answers to each of same, in said deposition.

214 Court here adjourned until the following morning, September 8th, at 8:30 o'clock. And met at said time pursuant to said adjournment.

The deposition of B. A. Kennedy was here read on behalf of the defendant by Mr. Straus of counsel for defendant.

B. P. GRIGSBY, SR., Having been called as a witness on behalf of the defendant, and having been first duly sworn, and being examined, testified as follows, to-wit:

Direct examination.

By Mr. STRAUS, of counsel for defendant:

Q. Mr. Grigsby, where do you live?

A. Bardstown, Kentucky, Nelson County.

Q. How long have you lived there?

A. Well, practically all my life.

Q. What is your business there?

A. I am in the general merchandise business.

Q. What do you handle with reference to machinery, in your business?

A. All kinds of farm machinery; mowers, binders, plows, harrows, and rakes.

Q. Wagons?

A. Yes, sir; buggies.

Q. General farm machinery?

A. Threshing machinery; nearly everything a farmer can use.

Q. How long have you been maintaining that business there?

A. I have had a business there since 1892. I owned the business, though I didn't have actual charge of it up to 1900.

Q. From 1900 you had charge of it?

A. Yes, sir.

Q. That general line of business you spoke of?

A. Yes, sir.

Q. You handle any mowers and reapers and binders?

A. Yes, sir.

Q. For what company?

A. International Harvester.

Q. What line of mowers and binders and reapers do you handle?

A. Well, we sell the McCormick, and Milwaukee and Champion and now and then a Plano; we have sold a Plano.

Q. How long have you been selling those machines for that Company?

A. Well, I would say from its organization, perhaps 1902 somewhere along there.

Q. Mr. Grigsby, state whether or not there has been any advance in the general market conditions, such as iron, steel, lumber, wood, and labor, in the country since that time?

216 A. Yes, sir; in all of those there has been an advance.

Q. How was that?

A. In all of those; lumber, steel, and labor.

Q. Could you give us an estimate of how much that advance has been?

A. I would say twenty five per cent.

Q. Has the binder you sell and the mower you sell for the defendant, and have sold since 1902, been improved, or is it worse or better, or as it was in 1902, when this company was formed?

A. I think there has been some material improvements. I am impressed with that fact, from the fact that our sales of repairs has decreased I would say one hundred per cent in the last five years.

Q. Do you keep on hand a stock of repairs for those machines you handle for them?

A. Well, yes, sir; our principal sales are the McCormick. We keep more of those repairs than we do the others; though we keep some of the Milwaukee and some of the Champion.

Q. Are those machines as good now, or better than they were in 1902, in your opinion?

A. I think they have improved them very much; I think they are better machines.

217 Cross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Mr. Grigsby, has there been any decline in the prices in the last few years?

A. I think not sir; I don't recall any.

Q. There hasn't been any decrease in the price of the machines you handle?

A. No, sir.

Q. You say that the increase in iron and the material of which those machines are made has increased materially, do you know of what material those machines are made?

A. They are made of steel; and some parts wood.

Q. Now, Mr. Grigsby, don't you know it to be a fact that the price of the material used in the construction of those machines, exclusive of wood, from the period covered by 1908, 1909, 1910, and up to July 1911, was less than the prices for the period covered by the years 1899, 1900, 1901, and 1902?

A. I don't know, sir.

Q. Do you know anything about the market prices?

A. Yes, sir; in a general way.

Q. Answer that question, whether those prices, taking the period I have mentioned, excluding the wood, whether they were higher?

A. I would say that the iron and steel were higher in 1900 and 1902, probably.

Q. Than it was for this time?

218 A. Yes, sir.

Q. For the other period?

A. Yes, sir.

Q. I will ask you, Mr. Grigsby, don't you know it to be a fact, or do you know it to be a fact, for the period included by the years 1903 to the year 1908, that the material, exclusive of wood, which is used in the construction of the various machines was as low, or practically no higher than it was in 1899, 1900, 1901, up to August, 1902, or do you know anything about that?

A. I don't know.

Q. Wouldn't express your opinion?

A. I wouldn't care to say.

Q. All you know is that the prices of machinery has steadily increased, that is true, isn't it?

A. There was some advances.

Q. And the prices of reapers and repairs has steadily increased, isn't that true?

A. I am not prepared to say that. I wouldn't say that, because I think some repairs have not, for instance the canvass on the binders, were less last year than they were way back.

Q. Is there more or less canvass used?

A. I don't think there would be any material difference.

Q. You base your opinion upon the rises, that the prices of the material has increased, from the fact that the prices of machinery has increased?

A. I base my opinion Mr. Carroll, upon this; I was in the hardware business in Louisville up to 1900, about that time we
219 were selling nails at one dollar a keg, and now they are worth two dollars and ten cents.

Q. Are there any nails used in the construction of this machinery?

A. No, sir; but I am—I think iron and steel have gone along practically on the same way.

Q. Your opinion is that for 1900 to 1902 it was higher than in 1909, 1910 and 1911, is that correct?

A. Yes, sir; I would say it was.

Q. Now, Mr. Grigsby, how long have you been familiar with the mowing and binding machines?

A. Well, I was raised on the farm; lived on the farm until I think I was about twenty or twenty-one; then I went into the mercantile business, and stayed in that until 1890.

Q. Machines, when you first knew them, were higher the prices were, than now?

A. No, my recollection was that binders sold about the same price when I first knew anything about a binder, or mower, in 1890.

Q. Improvements were being made along on them?

A. Yes, sir; continuously.

Q. Up to and including the present time?

A. Yes, sir; I think every year there is some little improvement.

Q. Prices began going up after 1902, on the machinery?

A. Yes, sir; there was one or two advances.

220 Q. One or two advances after that time?

A. Yes, sir.

Redirect examination.

By Mr. STRAUS, of counsel for the defendants:

Q. Do you handle wagons?

A. Yes, sir.

Q. Buggies?

A. Yes, sir.

Q. And other hardware?

A. Yes, sir.

Q. I will get you to state whether or not there has been a general rise in all of that, since 1902, all of that ware?

A. Yes, sir. There has been a material advance in the price of wagons.

Recross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. The advance has been in the price of the wagons; you don't know whether it was in the material of which the wagons were made or not?

A. No, sir.

(And further the witness sayeth not.)

221 ARTHUR JOHNSON, Having been called as a witness on behalf of the defendant and having been first duly sworn, and being examined, testified as follows; to-wit:

Direct examination.

By Mr. STRAUS, of counsel for defendant:

Q. Where do you live?

A. Chicago.

Q. What is your occupation?

A. Mechanical Engineer.

Q. For what Company do you work?

A. International Harvester Company?

Q. How long have you worked for them?

A. Since they began doing business?

Q. For what Company did you work before that?

A. Deering Harvester Company.

Q. In what capacity?

A. Draftsman; and mechanical engineer.

Q. How long were you connected with the Deering Company?

A. Since 1888.

Q. What were your duties as draftsman and engineer?

A. I was in the experimental department. The department which designs the machines.

Q. What position did you hold in that department before you went with the International Harvester Company?

A. I was an assistant then with the Deering?

Q. Under whom did you work?

222 A. Mr. B. A. Kennedy; he was in charge of the department, up to the time the International Harvester Company was formed.

Q. After you went with the International Harvester Company, with whom did you work, and under whom?

A. I then had charge of the experimental department at the Deering works, under the management of the City office.

Q. Did you ever work with Mr. Steward, who testified here yesterday, or under him?

A. I worked with him and under him in my early employment with the Deering Harvester Company.

Q. Are you familiar with the construction of machines manufactured by the International Harvester Company, the binders and mowers?

A. Yes, sir.

Q. Has there been any—since 1902, since the International Harvester Company commenced manufacturing machines, any improvement, or not, in those machines?

A. There has been considerable improvement in all of them.

Q. What is the purpose of your experimental department, the purpose?

A. The purpose of the experimental department, and there is one at each of the works, is to design the machines, and improve them continuously.

Q. Can you name any improvement that has been made, say in the McCormick?

A. In the last few years, on the McCormick binder, they have improved the *tying* mechanism; make it a surer tier than it was.

223 Q. Have you increased its weight or decreased it?

A. It had but little effect on the weight of the machine.

Q. Did you do anything to increase its weight or decrease it?

A. I can't answer that question Mr. Straus, directly, but I will say this; that in improving the McCormick in various details, incidentally the weight was decreased a little.

Q. Give us the number of pounds or do you remember?

A. I would say about forty pounds.

Q. Has the machine been made better by reason of those improvements?

A. Yes, sir; it is better, because the—As I said before, the knoter is better; the binding attachment works better, and has been designed so it has a little more capacity, and in its work it takes less draft to bind a bundle, and incidentally the decrease in the weight of the machine did more to decrease the draft of the machine as you draw it as a cart, if you please, over the road.

Q. Has there been any improvement made in the Deering?

A. There has been considerable improvement made in the Deering machine since 1902.

Q. In what respect?

A. The Deering Ideal Machine of 1902 was considerably lighter than the McCormick machine, and the machine made now *is* put upon the market for the last two or three years is considerably heavier. Besides that, it has more capacity for handling heavy grain; it is better adapted to handling extremely light grain, and it is more convenient binder to use.

224 Q. Why did they increase the weight of that?

A. The Deering binder in 1902 weighed only 1385 pounds on an average, against the McCormick binder which weighed a little over fifteen hundred pounds; of the same size, that is same width of cut, and in consequence, it is the weight you understand that makes the force; gives the power for the main wheel to turn and move the parts, and it was a little lacking in that respect, and the increased weight has given it more power.

Q. Are you familiar with the various kinds of metal, steel and iron that go into the construction of these machines?

A. Yes, sir.

Q. Has there been any change in the manufacture of these various machines, in the change from cast to mal-able iron in parts?

A. In weight you mean I guess. We have gone from gray iron to mal-able—

Q. What do you mean by gray iron?

A. The common brittle *cast* iron.

Q. Commonly called cast iron.

A. Yes, sir.

Q. Which is the most expensive, mal-able iron or cast iron?

A. Mal-able iron.

Q. Which is the more durable, and stronger?

A. Mal-able.

Q. Which is the heavier, for the same size, take a square inch of each?

A. There is not much difference in the specific gravity the weight per cubic inch, in gray and cast iron, not enough to consider; the mal-able castings, however, can be made lighter than the gray
225 iron castings and have the same strength.

Q. Now, how many different kinds of steel and iron are used in the manufacture of these machines?

A. I do not know that; I can't remember them. I can't enumerate them; I can enumerate some of them; starting with the cutting apparatus, that is high class steel to maintain the edge, you know. Then, we have a certain kind of high class steel that we call finger steel, for the bundle carrier. We use that to make the fingers of the bundle carrier, like that used in the hay rake; and there is a different kind of spring steel used for the seat spring; that is a different thing entirely. Then in order to reduce the weight, our machines, and in consequence the draft, we have been using a very great deal of steel called high carbon steel, which contains a high per cent of carbon, and in consequence is very much stiffer than the common steel.

Q. In order to obtain those various kinds of steel, and test them, you maintain an experimental station, or experimental departments?

A. Yes, sir.

Q. Have those departments increased the expense to the Company, since the formation of the Harvester Company of America?

A. Yes, sir; quite material.

Q. What system of inspection have you inaugurated in reference to all of this kind of material since the Harvester Company organized?

226 A. We have, in every factory what is known as an inspection department, which is divided into two parts, the first part inspects the raw material, and the second part inspects the finished product. By raw material, I mean that every car load of lumber that comes into the yards is inspected and culled out. The steel is analyzed, to see whether it comes to our particular specifications which that part—for which that part is intended, and for which it was bought. The paints are analyzed and tested out. And the oils, linseed oil has to come up to certain specifications; all of that is done by experienced mechanical engineers and chemists.

Q. I will ask you whether or not, wherever you have made a change in the character of steel, or in any other matter in the construction of this machine, whether or not that was intended to make the machine better?

A. All our efforts have been to make the machine better. I have never, as the man in charge of the experimental department of the Deering works, during the eight years I was in charge, I was never instructed, or criticized for the expense that we put on the machine.

The effort of the management was always to urge the department to make better machines.

Q. Did you make better machines?

A. Yes, sir.

227 Q. Are the machines now made better than they were in 1902?

A. I am quite sure they are.

Cross-examination:

Q. Mr. Johnson, you say you live in Chicago?

A. Yes, sir.

Q. How long have you lived there?

A. Since 1883.

Q. When was the process of this Court served upon you, requiring you to appear here as a witness for the defendant?

A. I was instructed to come here last Tuesday.

Q. By an officer, or process of this Court?

A. No, sir.

Q. Under whose instruction did you come?

A. My employer, the International Harvester Company.

Q. Which one of them?

A. The man who is in charge of my department, Mr. B. A. Kennedy.

Q. He advised you to come?

A. Yes, sir.

Q. Are your offices in Chicago?

A. Yes, sir.

Q. In what building?

A. I am not in the City office, corner of Harrison and Michigan Avenue.

228 Q. What is the name of the building?

A. Harvester Building.

Q. For what is that used?

A. It is a general office building, like many others in Chicago.

Q. What offices are in it?

A. The International Harvester Company for one; and the International Harvester Company of America has offices there.

Q. Any others?

A. Yes, I don't remember any of the others.

Q. You remember those two?

A. Yes, sir, because they occupy the top half of the building. I have never been in the lower half of the building, except as I passed through on the elevator.

Q. How many stories do those two companies occupy in that building?

A. About half; the seven top floors.

Q. Which occupies the top floor, or do they occupy them all together?

A. No, sir; the International Harvester Company occupies the upper six floors; the upper five floors; and the International Har-

vester Company of America the seventh and eighth floors of the building.

Q. The Seventh and Eighth Floors?

A. Yes, sir.

Q. They are in immediate connection with each other?

A. Not any more than the people who occupy the sixth floor and the one immediately below that, and the seventh floor?

229 Q. But there are no offices between the offices of the International Harvester Company, and the International Harvester Company of America?

A. No, sir.

Q. Now how did you happen to come here at the request of the International Harvester Company, to testify as a witness for the International Harvester Company of America?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. What business arrangements, if any, are between those Companies?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. They have dealings with the International Harvester Company of America?

A. Yes, sir.

Q. What character of dealings?

A. The International Harvester Company of America and its officials and salesmen have had cases to come to me when they wanted to know the particulars about some machines that were made for that Company by the International Harvester Company.

Q. They consulted you frequently?

A. Didn't have to very often.

230 Q. They would consult you whenever they deemed it necessary?

A. Yes, sir.

Q. And make suggestions to you?

A. Yes, sir; sometimes.

Q. Did you ever make suggestions to them?

A. No, sir; I never had occasion to.

Q. You were in what department?

A. The Experimental Department.

Q. Experimental Department?

A. Yes sir.

Q. How long were you with the Deering Company?

A. From 1888 to 1902.

Q. That is something like fourteen years?

A. Yes, sir.

Q. What position did you occupy with that company?

A. I was employed in the start there as a draftsman. We don't talk positions until a fellow has a job that carries authority with it

Q. You had no authority?

A. No, sir.

Q. When did you get a job that carried authority with it with the Deering?

A. I didn't have any particular job of that kind. I was promoted when the International Harvester Company was formed.

Q. Who was in authority over you while you were working for the Deering?

231 A. At what time.

Q. While you were working as draftsman?

A. At the time of the formation of the International Harvester Company?

Q. Yes, sir?

A. Mr. B. A. Kennedy.

Q. How long had he been with the Deering?

A. He was there when I came there in 1888.

Q. In what capacity?

A. Superintendent of the works.

Q. Did he continue in that capacity until the formation of the International Harvester Company?

A. Yes, sir.

Q. Who was at the head of the Experimental Department of the Deering?

A. Mr. Kennedy, I would judge.

Q. He had charge of that?

A. Yes, sir.

Q. You were working under him?

A. Yes, sir.

Q. How many other employes worked under him in that department?

A. Between twenty-five and thirty; some such number as that.

Q. When the International Harvester Company was formed, all of that department was transferred to the International wasn't it?

232 A. Yes, sir.

Q. All of them?

A. What do you mean by transferred?

Q. I mean re-employed by the International?

A. Yes, sir.

Q. All of them?

A. Yes, sir.

Q. Then you were doing what work for the International then, the same character of work you were doing for the Deering?

A. Yes, sir.

Q. So were the other men?

A. Yes, sir.

Q. Really the experimental Department of the Deering was transferred over and became part of the Experimental Department of the International Harvester Company?

A. Yes, sir; exactly.

Q. Mr. Johnson, you spoke about Iron and steel and so forth that goes to make these machines, what is the origin of that metal, all of it, is it iron ore?

A. Yes, sir.

Q. Then it is necessary for that to go through various processes before it is in a position to be manufactured into the particular articles you require in the construction of your machinery, isn't that true?

A. Yes, sir.

Q. Is that a long or short process?

A. I don't know; I am not an iron or steel worker.

233 Q. Do you know whether it is a cheap or expensive process?

A. No, sir.

Q. Isn't it true that the prices of labor in that character of business has increased as well as the price of labor in others?

A. Yes, sir; I believe it is.

Q. And practically in the same proportion?

A. That, I don't know.

Q. Have you anything to do with the mechanical department of the International Harvester Company, so far as the employment and payment for labor is concerned?

A. I hire men occasionally for the Experimental Department.

Q. I am speaking of the construction department?

A. No, sir.

Q. You know then, nothing about that?

A. No, sir.

Q. Do you know anything about the prices of iron and steel and the supplies of this consolidation?

A. No, sir.

- Q. You know nothing about those things at all?

A. Yes, sir.

Q. You don't undertake to say that the prices have increased do you?

By Mr. STRAUS: He has not said so.

(No answer.)

Q. Now, during the time you were *the* Deering Company in this experimental station with Mr. Burr Kennedy as the head of course then you were directing your efforts to improving the Deering, weren't you?

234 A. We were largely directing our efforts to reduce the cost of the deering at that time.

Q. You were endeavoring to improve it?

A. Yes, sir; so far as we could.

Q. Isn't it true that in the years—the early days this machinery, the price was very high, in the early days of the McCormick and Deering and all of the various companies, those that were established years ago?

A. I have been told so.

Q. Isn't it an historical fact that in the time of the first construction of those machines the prices were much higher than they are now?

A. Yes, sir.

Q. More than double the price now?

A. Yes, sir; I should say so.

Q. The machines were covered with patents, the original machines?

A. Yes, sir.

Q. And as the time went on, the machines were being constantly improved?

A. Yes, sir.

Q. And the prices constantly lowered?

A. Yes, sir.

(And further the witness sayeth not.)

235 M. C. RONAYNE, Having been called as a witness on behalf of the defendant, and having been first duly sworn, and being examined, testified as follows, to wit:

Direct examination.

By Mr. STRAUS, of counsel for Defendant:

Q. Mr. Ronayne, where do you live?

A. Chicago, 521 Millard Avenue.

Q. How old are you?

A. Forty-two.

Q. How long have you lived in Chicago?

A. Well, I came to Chicago the year after the World's Fair; 1894.

Q. What is your occupation?

A. I look after the time and pay rolls for the International Harvester Company, the title might be that of Chief Time Keeper and Pay Roll.

Q. Chief Time Keeper and keeper of the pay rolls?

A. Yes, sir.

Q. How long have you occupied that position with that Company?

A. In 1895 I went to work for the McCormick Machine Company. My work when I started was to look after the work turned in by the different departments and men; and connected with the time keeper; and at the time of the organization I was chief time keeper and pay roll for the McCormick works.

Q. How long have you been with the International Harvester Company?

236 A. Sixteen years.

Q. I am talking about the International Harvester Company?

A. Since its organization.

Q. 1902?

A. Yes, sir; sometime in 1902.

Q. What have you been doing with that company, since you have been there in 1902?

A. I believe in the early part of 1903; I was chief time keeper and pay roll man of the McCormick works for the International Harvester Company.

Q. Of what division?

A. Yes, sir.

Q. What have you been doing since 1902?

A. About 1905 I was located in the General Office in Chicago, the Harvester Building.

Q. Time Keeper?

A. Yes, sir; and looked after the time at the different works, and made up the figures for the manufacturing departments.

A. Are you familiar with the prices of labor paid by the International Harvester Company, since 1902?

A. Yes, sir.

Q. Since 1902, up to and including the present time, what has been, or has there been any increase in the price of labor employed by that Company in the manufacture of its machines?

A. Yes, sir.

Q. About how much increase has there been in the labor in that time?

237 A. You mean the per cent?

Q. Yes, sir.

A. The per cent increase has been twenty-seven per cent and one tenth per cent increase.

Q. Since when?

A. Since 1902. Take the 1902 season or year, and take 1911, the eleven months up to and including July and August, the twelve months, and from those figures, that probably would be, I should say about twenty seven and five tenths per cent. The rate of increase is gradually going up every month.

Q. Does that apply to the whole labor?

A. Yes, sir; the whole of the labor. Do you wish me to explain how I arrive at that?

Q. Yes, sir?

A. The number of hours worked by every man, is kept, the actual hours, and those hours are divided into the gross earnings of the men; and in that way we get the average rate per hour. I can give you a few of the departments that——

Q. I just want to know the general increase?

A. The general increase is twenty seven and one tenth per cent up to and including July.

Q. This year?

A. 1911 over 1902.

238 Cross-examination.

By Mr. CARROLL, of counsel for Plaintiff:

Q. Where is your office, Mr. Ronayne?

A. In Chicago.

Q. Where in Chicago.

A. Harvester Building on Michigan Avenue and Harrison Street.

Q. Who owns the building?

A. I don't know.

Q. Why is it called the Harvester Building?

A. I don't know just why.

Q. Have no idea?

A. No, sir; it is just the name they give the building,

Q. Any Harvester Company have offices in that building?

A. Our offices are there?

Q. What office is that?

A. The accounting department.

Q. Of what?

A. International Harvester Company.

Q. Is that the only one?

A. There are other departments also.

Q. What Harvester Company does that include, the International Harvester Company of America or the International Harvester Company?

A. The International Harvester Company, the one I work for.

Q. Where is the International Harvester Company of America?

239 A. It is located in the Harvester Building.

Q. Where with reference to the portion of the building occupied by your company?

A. They are on the eighth floor; and we are on the tenth floor.

Q. What is on the ninth floor?

A. The ninth floor also to my best knowledge the International Harvester Company of America. I don't know positively on that; I know we are located on the tenth floor.

Q. How many other floors?

A. Also got the eleventh floor.

Q. Any other?

A. No, I don't think so.

Q. You have got the tenth and eleventh, and the International Harvester Company of America the ninth and tenth, is that it?

A. I suppose they have got the seventh and eighth and ninth floors.

Q. There is pretty close communion between those two companies?

A. Not in our work; there is no connection.

Q. How in what way is this communion?

A. That I don't know; I work for the International Harvester Company; my work is connected with the pay roll and time keeper. I have no business with the office of the International Harvester Company of America at all.

240 Q. What pay rolls do you look over?

A. All of the pay rolls and time of the men at the various works.

Q. At the various works in the various states?

A. Yes, sir.

Q. How often do you receive those pay rolls?

A. Every half month; they are sent to me every half month.

Q. When did you come here?

A. Here.

Q. To Kentucky; this last time?

A. I came down Sunday night.

Q. How did you happen to come?

A. How did I?

Q. Yes, sir?

A. I was asked to come.

Q. Who asked you?

A. Mr. McMath.

Q. Asked by letter or personally?

A. I was—— This last time.

Q. Yes, sir; were you asked by letter or personally?

A. Asked to be back here——

Q. You were here before?

A. Yes, sir.

Q. And Mr. McMath told you to come back?

A. No sir. Judge Rutledge told me to be.

Q. Mr. McMath told you to come the first time?

A. Yes, sir.

Q. Did you have any process of court served on you?

A. Process; you mean summons?

241 Q. Yes, sir?

A. No, sir.

Q. Who is Mr. McMath?

A. He is an attorney for the——

Mr. STRAUS: Object to that line of questioning.

Q. Who is Mr. McMath?

A. I tell you I didn't know Mr. McMath; I didn't know there was such a man as McMath; he is in the law department.

Q. Of what company?

A. International Harvester Company.

Q. Of America?

A. Of America.

Q. Why were you then obeying the directions of Mr. McMath, you an employé of the International Harvester Company, why were you obeying the directions received from the attorney of the International Harvester Company of America?

Counsel for defendant objected to the foregoing question but the court overruled the objection, to which counsel for defendant excepted.

A. Well, I don't know as I can answer that question. I knew Mr. McMath was an attorney, and he asked if I would come down here, as I understood the time and pay roll, if I would come down here; and I consulted the head of the department where I work; and he told me to come down; that is my explanation.

242 Q. Do you know anything, Mr. Ronayne, of the cost of the manufacture of iron, or the transposition of iron ore into iron and steel, which is used by your company in the construction of its machinery?

A. No, not posted on that; I don't know that.

Q. You know nothing about the prices of those various things?

A. No, sir.

Q. Or at the various times?

A. No, sir.

Q. You say the pay roll has increased; does that include the price of the laborers in the mills and all the employes of the Company?

A. All of the employes of the International Harvester Company.

Q. Officers and everybody?

A. Yes, sir.

Q. I suppose the officers' pay has been increased?

A. That is the average; in this way we get the actual hours worked in every one of the works, and then we get the gross earnings paid to the men by the periods.

Q. Have the men increased in efficiency any?

A. I presume they have.

Q. Now, Mr. Rouayne do you know that the increase in the price is based to a very great per cent on the increase in efficiency of the labor?

A. Of course that part of it; the day labor has increased in price, and increased in efficiency.

243 Q. Take the whole thing?

A. The whole thing; the same class of help is employed all the time.

Q. Skilled mechanics?

A. Skilled in their line of work?

Q. Yes, sir; isn't that true, or they wouldn't be employed isn't that true?

A. Yes, sir.

Q. They are constantly becoming more efficient and able to turn out more work, and for those reasons, the price of labor has increased, and the net amount turned out has increased, isn't that true?

A. I tell you, as far as the operating in the plants, you see, I don't know much about that. I know this; I know that the trend of the manufacturing department was to increase the wages of the men. I know that the machine works gave instructions to the Superintendents that they wanted them to increase the wages of the man. In regard to the other concerns, so they wouldn't take our good men away from us, to keep them from doing that.

Q. And because of the efficiency of the men, and they were turning out more work and good work, isn't that true?

A. Not exactly, I wouldn't say that.

Q. Weren't the efficient men turning out more work and wasn't that why they wanted to retain them; answer that?

A. Give me that question again.

Q. (Question read to witness by stenographer.)

244 A. Well, the only way I can explain that, is that the company knew labor was going up, and the cost of living was going up, and rent was going up, and everything was going up. I know myself, in 1902, I paid eighteen dollars a month rent, and today I can't get the same place for twenty-five dollars. My understanding was that the company wanted to keep up with the times, and in that way advanced the wages.

Q. Do you mean for the court and jury to understand you, that the question of increase in the efficiency of the employes, and their ability to turn out more work wasn't taken into consideration in the increase in wages?

A. You mean, that is, that the increase in efficiency did not have something to do with the increase in wages?

Q. Yes, sir.

A. Well, I would answer that question that I think the men's efficiency had something to do with it, but I don't know what part. I would say, though; I will say this to the jury, that the greater part of that increase was due to the advance in their earnings.

Q. Advance in their earnings?

A. Yes; I know that from the conversation I had with the manager of the works, and talks that he —

Q. Now in the conversation you had with the manager of the works did you ever learn that the men were turning out more work?

A. Turning out more work?

Q. Yes, sir. Where men work on the piece, by reason of his efficiency didn't they turn out more work by reason of improved machinery, haven't they been able to turn out more work?

A. I don't think I ever talked on that point.

Q. You only talked upon the points you have testified to?

A. Yes, sir.

Q. When did you begin talking to him about that?

A. Take in the whole year of 1910; February or March, 1910 was the period that they took the matter up.

Q. Took the matter up then?

A. Yes, sir. I was asked to investigate at that time, just the condition at the works, and I went to our works and went around to the foremen, and talked to them, and asked them what—Just talked in a general way about the men, and if they were getting enough wages, and if they were satisfied. I also went to the men's homes in Chicago, their homes. I would go there at night, and some of the men had left, and I would go to them and say, why did you leave the Harvester Company, you have been there five or ten or fifteen years, why did you leave there; I left there because I was offered more money they would say, and it costs me more to live now, and they said they were offered more money and they left. And I come back and made my report of that, and I told them that in my opinion that there had been some of them, and the best men were leaving, because other concerns were offering the men more money; and I told them that. The Manager, Mr. John G. Woods, said he would summon the Superintendents and—

246 Mr. CARROLL: We object to the conversation.
The COURT: Sustains the objection.

A. (con.) I don't know; I told Mr. Woods just what I found and he said—

The COURT: Wait, Mr. Ronayne, when I tell you to stop you stop. Don't relate any of those conversations at all.

Q. That was the talk about threatened strike in your establishment, about that time?

A. No, sir; I know nothing about any strike talk at that time.

Q. You don't?

A. No, sir.

Q. You have been having conversations with the men?

A. Yes, sir.

Q. You have what is called open shops, is that true?

A. I would say so.

Q. Mr. Ronayne, where are those records you spoke of?

A. I have; I tell you what I have got here, I took and recapitulated the figures for the eleven months off of my record. I have got my records here in my trunk for two departments, the McCormick works and one at the Deering, the binder of the McCormick and the Binder of the Deering works, and the mower at the McCormick; I have got the original recapitulation for the Deering and McCormick works for 1902; part of the records.

247 Q. Where are the Plano records?

A. I had the Plano records for 1911.

Q. 1911?

A. Yes, sir.

Q. Originals or a copy?

A. The originals.

Q. How did you get them from the works?

A. Their reports.

Q. Their reports to you?

A. Yes, sir.

Q. You haven't the original report you made out yourself?

A. No, sir; I have the original report made up at the McCormick works in 1902.

Q. Did you make it up?

A. I didn't make it up this particular year, I did make it up—

Q. Who made it up?

A. The pay roll man.

Q. Who is he?

A. Best of my knowledge Earl.

Q. Where is he?

A. I don't know; he is not working for the Company.

Q. The man who made it up is not here?

A. No, sir.

Q. No, sir?

A. No, sir; but I understood how it was made up; I made it up prior to that time; I knew just how it was made up, you took off the hours all of the day hours.

248 Mr. CARROLL: We object to what he did prior to that time; and to all records made in 1902 by a man whom he says is not here and all records made by some other person.

The COURT: I will tell the jury not to regard the last answer to this question.

Q. Where are the Milwaukee records?

A. For 1911?

Q. For the period from 1902 to 1911?

A. At the Milwaukee *records*?

Q. Where are the Osborne?

A. At the Osborne works.

Q. You only picked out certain records for certain years and brought them here?

A. I got the records from the McCormick and Deering works for 1902; I didn't bring them all, because of the cost; they weight is 175 pounds; that is too big a proposition to carry around.

Q. You selected the two to bring here?

A. I selected the McCormick and Deering Works; I feel acquainted with the Deering, and I had the figures for the others.

Q. You feel that you are capable of testifying without the records as to the others?

A. This general advance was along the same.

Q. About the same?

A. Yes, sir.

Q. You know nothing about the advance in efficiency, or in the work turned out?

249 A. I wouldn't testify as to that.

Q. You don't know anything about that?

A. No, sir.

Redirect examination.

By Mr. STRAUS, of counsel for defendant:

Q. The McCormick and Deering are the greater works, for the concern, they are greater than the others?

A. Yes, sir; they are the larger ones.

Q. In seeking information around among the men, I am not asking you for any particular conversations with any particular men, but in making the inquiry as to the question of the advance in the wages, state whether or not you obtained information that the men were claiming an increase in the cost of living to them, all the time?

A. That was the information I got from the men when I went to their homes in Chicago; and that was substantially my report.

Q. From your conversations and your investigation of the question of the cost of living, were their complaints well based or not?

A. I felt it was. In fact, I knew myself, my cost of living had increased.

Q. These advances in the wages were largely made upon that proposition?

A. That is the way I understood it, yes, sir.

(And further witness sayeth not.)

250 W. B. SWIFT, having been called as a witness on behalf of the defendant, and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. STRAUS, of counsel for defendant:

Q. Mr. Swift, where do you live?

A. Chicago.

Q. What is your occupation?

A. Lumber purchasing agent.

Q. For what company?

A. International Harvester Company.

Q. How long have you been lumber buyer or lumber purchasing agent for that company?

A. About five years.

Q. What did you do before that?

A. I was connected with the same Company. Stock keeper and lumber man.

Q. You have been in the lumber department since 1902, since its organization?

A. Yes, sir.

Q. Are you familiar with the prices of lumber from 1902 to the present time, that has been purchased by that company for the purpose of manufacturing its machines?

A. Yes, sir.

Q. What kind of lumber do they purchase?

A. Practically all kinds of lumber that grows in the domestic woods.

251 Q. What kind of lumber do they use in making their machines?

A. Ash, Birch, Beech, Maple, Cottonwood, Elm, Hickory, Oak, Yellow Pine, Poplar.

Q. What do you mean by the pole stock?

A. That is the wood that goes into the construction of the tongue, or pole in the implement, such as the mower and reaper harvester and binder.

Q. From whom, since 1905 have you purchased the hard wood that goes into the double trees and single trees?

A. From companies——

Q. Have you purchased any in Kentucky?

A. Yes, sir; Quiggins & Crawford, or Quiggins & Tinsley; and comes from other companies, some other local companies.

Q. What kind of lumber do you make the tongues out of?

A. Long leaf Yellow Pine.

Q. How long have you been making them out of that?

A. Probably twenty years or more.

Q. Is that hard wood?

A. Yes, sir.

Q. Is that wood the best wood for the purpose of making the tongues or not?

A. We think so; yes, sir.

Q. Where is that pine purchased?

A. Largely from Mississippi, as well as from Georgia, Alabama and Louisiana.

Q. Has there been, since 1902, up to 1908, or 1909, any increase in the price of this lumber you have purchased for this company?

252 A. Yes, sir.

Q. What lumber has increased in price?

A. Practically all of the lumber I have enumerated, without an exception.

Q. How much has it increased in price?

A. The different woods vary. I think on a general average up to 1908, which was the crest point, the prices increased thirty five per cent, maybe on a general average all of those woods.

Cross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Mr. Swift, do you know Mr. Quiggins?

A. Yes, sir.

Q. You know he testified here?

A. Yes, sir.

Q. Did he tell you what he testified?

A. No, sir.

Q. How much did he get increase in hickory?

A. I am not familiar with the contract made with him.

Q. Didn't you say the increase averaged thirty five per cent? How much was the increase here in Kentucky, where you were buying.

A. It might have been fifty per cent, for all I know.

Q. It could?

A. Yes, sir.

253 Q. Isn't it a fact that it didn't increase but ten per cent in 1907, so far as poplar was concerned, and that you quit buying from them in 1907, poplar?

A. Not so far as my knowledge goes.

Q. Didn't you say you were General Purchasing Agent?

A. Yes, sir.

Q. You were buying from Quiggins and Crawford?

A. Yes, sir.

Q. The same Mr. Quiggins who testified here yesterday?

A. I don't know what he testified to.

Q. You know he testified?

A. Yes, sir.

Q. The Quiggins from Quiggins and Crawford?

A. Yes, sir.

Q. The same man testified that you have been buying from?

A. Yes, sir.

Q. Tell the court and jury what you paid him for poplar, and what the increase was in the price?

A. I don't know, sir.

Q. Well, what do you mean by saying it has increased thirty-five per cent?

A. I don't know what I paid Quiggins & Crawford; I can tell the court what the advance in poplar was.

Q. I am asking you what you paid Messrs. Quiggins & Crawford, one of the parties from whom you purchased; I am asking you to tell the jury what you paid them, and what the increase was?

A. Well, sir; I wouldn't be in a position to say offhanded what I paid the gentlemen; I don't pay everybody the same price.

254 Q. You pay different prices?

A. Pay whatever we can.

Q. What did you pay for hickory from Quiggins and Crawford, in the State of Kentucky, during the period I have mentioned?

A. I might have paid sixty-five and I might have paid eighty.

Q. You don't know and can't tell?

A. No, sir.

Q. You come before the court and jury and say the prices have increased thirty five per cent, and then say you can't say what you paid?

A. I was talking about the prices advancing.

Q. I am talking about the prices of this lumber you bought here in Kentucky, what you paid?

A. Paid whom?

A. The parties whom you purchased from?

A. I don't know.

Mr. STRAUS: I object to the manner of interrogation, and the counsel shaking his finger at the witness.

The COURT: Sustains the objection.

Mr. CARROLL: I beg the gentleman's pardon. It was unthoughtably done on my part.

Q. What you paid to Quiggins & Crawford in the State of Kentucky, in the years 1904-5-6-7, for hickory, and what you paid Quiggins & Crawford during the years 1905 and 1907, for
255 poplar, if you will permit me to ask you without any disrespect to this pencil?

A. I tell you I am not in a position to say what I paid that particular party, or that particular company.

Q. Mr. Swift, how many feet in a pole?

A. It depends on the pole; it varies from twelve feet up to about twenty feet.

Q. What is the size and length of a pole used in Kentucky in the binders and mowers, for farmers?

A. Twelve feet up to twenty feet in one; I think the rough size is about fourteen feet long.

Q. In length?

A. Yes, sir; in the rough size.

Q. I mean the size used here?

A. I couldn't tell you.

Mr. STRAUS: What do you mean by rough size.

WITNESS: The poles are bought in billits, from which we season it, and then cut it to the desired length.

Q. About how many feet of hickory is used, and what is the hickory used for in mower and binders?

A. In a mower it is used for the pitman rod, that works the knife.

Q. That is the mower; how many feet in a pitman rod, hickory?

A. I should say off-handed about a half to three quarters of a foot.

Q. What other hickory is used in the mower?

256 A. Used for a single trees and double trees.

Q. How much hickory in a single tree?

A. A foot.

Q. How much in a double tree?

A. Probably a foot to a foot and a half or two feet. Those are not accurate.

Q. Approximately?

A. Yes, sir.

Q. Mr. Swift, what other wood is used in a mower outside of the tongue and single trees and pitman rod, and double trees, what other portions are wood?

A. There is the divider, on the grass board.

Q. What is that made of?

A. Maple, largely.

Q. Where; in this State; the machines used here?

A. Yes, sir.

Q. How much in that?

A. Might be two feet.

Q. So there is about two feet of maple, about a foot of hickory in the single tree, and a foot and a half in the double trees, and a half a foot in the pitman rod, hickory?

A. I think so.

Q. Most of your pitman rods are made of metal?

A. No, sir; not on a mower.

Q. Are you certain of that?

A. I am certain—I mean I am not certain.

Q. You are just guessing?

257 A. I know we buy the second growth hickory.

Q. Don't know whether it is used in the pitman rod or not?

A. No, sir.

Q. You don't know whether used in Kentucky or not?

A. No, sir.

Q. Isn't it a fact that more pitman rods are made of metal in Kentucky; the most of them?

A. I couldn't tell you anything about that.

Q. Now let us come to the binder; be there—the pole on the binder is about the same length?

A. A little longer, and a little larger.

Q. Single trees and double trees about the same size?

A. Yes, sir.

- Q. What other wood is used?
A. Maple.
Q. Where?
A. Used in the slides, rolls; and the divider boards.
Q. Do they use Maple or Poplar for the rollers?
A. Use both.
Q. Which do they use the most of?
A. Maple.
Q. Which is the most valuable?
A. Poplar is.
Q. How much wood is there in the rollers?
A. Well how——
Q. How much wood in the rollers on a binder such as is used in the State of Kentucky?
258 A. I couldn't tell you.
Q. How many rollers in a binder?
A. Six or seven.
Q. Six or seven rollers?
A. Yes, sir.
Q. Did you ever run one?
A. No, sir.
Q. Ever see one run?
A. Yes, sir.
Q. Where are they located?
A. Largely to carry the elevator.
Q. How long are the rollers?
A. Four feet.
Q. There would be about twenty-four feet of rollers?
A. I couldn't say.
Q. You say the rollers are four feet wide; and there are six of them; I mean four feet long; six times four are twenty four?
A. Yes, sir.
Q. Is that all the wood?
A. No, sir, the decks.
Q. What is that made of?
A. Different woods.
Q. What are the machines in Kentucky, and Bullitt County, made of?
A. I am not familiar with them.
Q. Don't you know anything about them?
A. No, sir.
259 Q. Mr. Swift, there was a panic in this country in 1907, wasn't there?
A. 1908, wasn't it?
Q. It struck the timber market very viciously, didn't it?
A. Yes, sir.
Q. In fact, it reduced the price of southern pine to practically nothing?
A. No, sir.
Q. Couldn't be sold, couldn't be transported up there?
A. No, sir.

Q. No reduction in the price?

A. Yes, sir.

Q. How much?

A. About five per cent.

Q. Only five per cent?

A. The lumber we bought.

Q. What reduction in 1909?

A. I don't think it was reduced in 1909.

Q. None in 1910?

A. I don't think so.

Q. Don't you know, as General Purchasing Agent?

A. I think the general average——

Mr. STRAUS: We object to his thoughts, we want his knowledge.

The COURT: Yes, of course, his thoughts would not be competent.

A. (con.). After the panic struck us up to 1911, I think the general average in reduction of the lumber that goes into the construction of these machines was about five per cent.

260 Q. That is your thoughts on the subject?

A. That is my knowledge.

Q. You used the word think, is the reason I asked you if it was your thoughts.

A. (No answer.)

Redirect examination.

By Mr. STRAUS, of counsel for the defendant:

Q. You are in charge of the general purchasing department in the International Harvester Company, and not in the construction department?

A. No, sir.

Q. Do you know how much lumber goes into the particular machines?

A. No, sir.

Q. Have no reason to know that?

A. No, sir.

Q. All you do is to look after the purchasing of all lumber and all kinds of lumber the Company uses?

A. Yes, sir.

Q. The International Harvester Company?

A. Yes, sir.

Q. And you are familiar with the prices?

A. Yes, sir.

Q. But with any particular contract with any particular saw mill man, you are not familiar with that?

A. I couldn't tell you off-handed.

261 Q. There are a great many men you purchase from?

A. Yes, sir.

Q. And the prices vary from *the* time to time per the foot?

A. Yes, sir.

Q. All you know is the general cost?

Counsel for plaintiff objected to the foregoing question and the court sustained the objection.

Q. State whether or not all of your knowledge is about the whole amount purchased, as a whole?

A. Yes, sir.

Q. And the prices as a whole?

A. Yes, sir; as a whole.

Q. You don't undertake to keep each man's contract and how much you pay each man for each car load, you don't keep an account of that in your mind?

A. No, sir.

Q. Would that be possible for you to do?

A. Impossible.

Q. You spoke of some reduction of five per cent in 1909, on lumber, was that over the reduction, I mean that much reduction on the prices of 1908?

A. I think my answer was that the reduction took place between 1907 and 1908; the general average.

Q. The five per cent was the reduction from the high prices?

A. Yes, sir.

(And further the witness sayeth not.)

262 W. J. GARROD, having been called as a witness on behalf of the defendant and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. STRAUS, of counsel for defendant:

Q. Mr. Garrod, where do you live?

A. Chicago.

Q. What is your occupation?

A. Assistant Chief Store Keeper for the International Harvester Company.

Q. How long have you been Assistant Chief Store Keeper?

A. Since last December.

Q. What is a store keeper, what do you do, that is what I mean?

A. The Store Keeper is the man who has charge of the supply of materials, for the manufacturing plants.

Q. You have a store house for all of this material?

A. Yes, sir.

Q. All kinds of material?

A. All kinds that enter into our products.

Q. Are you familiar with the price of those kinds of material from 1902 up to the present time?

A. Yes, sir.

Q. Name the materials that enter into the store houses and enter into the construction of these machines, the principal ones

262½ A. There is steel of a great many varieties; pig iron, cotton duck, leather, lumber, paint; that is practically all of the larger lines.

Q. You have charge of those materials in these store houses as Assistant Store Keeper?

A. Yes, sir.

Q. Now, since 1902, up to the present time has there been any increase in the price of those materials, you store away for the purpose of manufacturing these machines?

A. Yes, sir.

Q. What has been; say at that time; in the time, about the per cent increase in the price of those materials?

A. The increase on steel was approximately twenty per cent.

Q. Twenty, did you say?

A. Yes, sir; pig iron about twenty-five; cotton duck about forty five; leather straps about sixty; paints and oils about fifteen per cent; fuel about fifteen per cent.

Q. What do you mean by fuel?

A. Fuel, the oil and coal and coke.

Q. What is that used for?

A. Used for operating our various shops.

Q. Are large or small quantities of that used in the operation of these plants?

A. Very large quantities.

Q. I understood you to say there has been an advance in the price of that too, in that time?

A. Yes, sir, there has.

263 Q. You have nothing to do with the employment of labor?

A. No, sir.

Q. You don't know anything about that, specifically?

A. No, sir.

Q. How many kinds of steel, about how many kinds of steel is used in the construction and manufacture of these machines?

A. About forty; about forty.

Q. What system of inspection, if you know, is used for the purpose of ascertaining the proper kind of steel to be used, before it is used in the machines?

A. We hold the shipper to conform to the definite and specific specifications which we have made after long tests; and after the raw material is inspected, and passes into the shop for them to inspect it after each operation, and the assembled machines, and the units rather of each assembled machine are inspected, and a great many completed are inspected.

Cross-examination.

By Mr. CARROLL, of Counsel for Plaintiff:

Q. Where is the Wisconsin Steel Company situated?

A. South Deering, Illinois.

Q. What is their business?

A. Manufacturing steel bars.

Q. Are they owners of any iron or mineral lands, or anything of the kind?

264 A. It is said to.

Q. Isn't that a subsidiary organizaion of the International Harvester Company?

A. I understand it is; I have no specific knowledge.

Q. How much material you use is furnished by the Wisconsin Steel Company?

A. About sixty per cent.

Q. I am speaking of the metal, of course?

A. I have no real figures to guide me in making my answer.

Q. As assistant General Store Keeper, you have general knowledge of that subject, don't you?

A. Not necessarily; you must understand we buy steel from probably fifteen concerns.

Q. That isn't the question; about how much steel do you buy from the Wisconsin Steel Company; you get most of your steel from it; a larger per cent?

A. Yes, sir; we get the larger per cent.

Q. How much mineral lands does it own?

A. I don't know.

Q. It mines its own oil and manufactures it?

A. I don't know.

Q. You said a moment ago it owns mineral land?

A. Yes, sir; but that doesn't mean that it mines its own oil.

Q. How far is that from Chicago?

A. I guess about ten miles.

Q. I suppose it sells to you at a profit?

A. I don't know.

265 Counsel for defendant objected to the foregoing question and answer, and the court sustained the objection.

Q. Mr. Garrod, how do the prices of material compare, during the periods from 1909, 1910 and 1911, to August 1911, and beginning in 1899, 1900, 1901, and 1902, to August, 1902?

A. I don't know as I follow you closely.

Q. How do the prices of steel and iron compare for the period of August 1902, and the period embraced by the years, 1909, 1910 and 1911, up to July 21st 1911, up to July 21st, how do the prices compare in those periods?

A. Let me see, as I understand you you want the comparison on prices from 1899 to —

Q. 1909 and 1910, and 1911; for the last three years, and for the years 1899, 1900 1901 and 1902, to August 1902?

A. The prices for the last three years are materially higher than they were for the years you have mentioned.

Q. Was pig iron higher?

A. Yes, sir.

Q. Was steel higher?

A. Yes, sir.

Q. Is Bessemer steel higher?

A. Yes sir.

Q. Between the periods of from 1903 to 1908, how do the prices

compare with those in the periods from 1899 to 1902, August, 1902?

266 A. Very much higher.

Q. Now you are certain of that fact are you?

A. Yes, sir.

Q. You know nothing about the—About ninety-five per cent of the material used in the machines mowers and binders is metal, isn't it or ninety per cent at least?

A. I don't know.

Q. What would be your estimate; you have some idea?

A. I have some idea along that line Yes, sir.

Q. Give your idea?

A. The metal will run about eighty per cent is my best judgment.

Q. Might not it go higher than that; don't it vary in different machines, speaking of binders and mowers?

A. It varies in those two machines very much.

Q. Which machine—some are lighter and some heavier?

A. The proportion of metal in the mower is less than the metal—

Q. What is the proportion of metal in the mower?

A. I don't know.

Q. About?

A. Probably eighty five per cent.

Q. And in the binder about eighty per cent?

A. Yes, sir; as I understand it?

Q. You are only approximating it?

A. Yes sir; I don't know for sure.

Q. You don't know and don't profess to speak with accuracy?

267 A. Yes, sir.

Redirect examination.

By Mr. STRAUS, of counsel for defendant:

Q. You are not in the construction department?

A. No, sir.

(And further witness sayeth not.)

It was agreed by counsel for defendant that plaintiff might introduce one witness in rebuttal here, who could not be present later.

P. C. COLEMAN, having been called as a witness on behalf of the plaintiff and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Have you been sworn?

A. Yes, sir.

Q. Where do you live?

A. Bullitt county.

Q. How long have you lived in Bullitt county?

268 A. Ever since I was seven years old.

Q. Where are you in business, in the City of Louisville?

A. Yes, sir.

Q. In what business are you?

A. Manufacturing and dealing in railroad, and other supplies, iron and steel.

Q. How long have you been engaged in that business?

A. I have been a partner in the business since 1896; prior to that time, I was in the business under my father.

Q. What business was he in immediately prior to 1896?

A. In the same business.

Q. Outside of that, Mr. Coleman, and your connections, have they been such as to give you a knowledge, general knowledge of the iron and steel matters pertaining to the manufacture of same, to a certain extent?

A. My father, formerly, to 1876 and 1877 was engaged in the rolling mill business in Louisville, and my brother in law, Arthur J. Moxam, first was connected with the Birmingham Rolling Mill; and later he was connected and operated a mill in Louisville for the manufacture of the Johnson Rail, when it first came out; after that he was in Georgetown, Pennsylvania, and built a plant, or bought a plant; and later in Loraine, Ohio. After Mr. Moxam left that plant he went and built a steel plant at Sidney, Nova Scotia; In addition to that, my brother was for a long time connected with the Birmingham Rolling Mills; when that fell through, went into the hands of the receiver, at which time my father and myself
269 were representing the Birmingham Rolling Mills.

Q. During your entire life in business or by relation to those in business, you have been familiar with the iron and steel trade?

A. To a large extent.

Q. State whether or not you are familiar, both from personal knowledge, and from the investigation you have made, as to the market conditions of the prices of steel and iron, for the period embraced by the years 1899, up to August, 1902, and for the prices of iron and steel such as is used in the construction of machinery for the years 1909, up to July, 1911, and state, if you are familiar whether or not there was any difference in the prices in those metals in those periods, if there was any difference, which was the difference?

A. You asked for the prices of machinery?

Q. No; Iron and Steel?

A. That goes into the machinery.

Q. Yes, sir?

A. Specifically speaking, I presume, if you mean the raw material, and other stuff, which possibly would constitute that?

Q. Yes, sir?

A. Of course, I am not familiar with the machine business, and couldn't state what goes into the machines.

Q. Yes, sir?

A. But the high period that is the period from 1899 to 1902, and the period to August, 1902, I believe you said.

270 Q. Yes, sir.

A. To?

Q. From 1909 to July 1911?

A. The general tendency was slightly lower.

Q. In which period?

A. The general class, that is, iron and steel, without going into details.

Q. During which period?

A. During the latter period; but there was not a great deal of difference.

Q. If any difference it was lower during the latter part than the first?

A. Yes, sir.

Counsel for defendant objected to the foregoing question, and the court sustained the objection.

Q. During the period from 1903 to 1908, inclusive, what were the prices, state what were the prices as compared with the first period, from 1899 to 1902 inclusive?

A. 1899.

Q. Yes, sir, 1899, 1900, 1901, to August, 1902, then from August, 1903, to 1908?

A. Well, there was not a great deal of difference in it?

Q. Not a great deal of difference in it?

A. No, sir; practically; take the entire period, there was not; there was a time when the prices went pretty high.

Q. Now, Mr. Coleman, I will ask you to state whether or not the prices of iron and steel, pig iron, doesn't fluctuate to a certain extent?

A. Yes, sir.

271 Q. I will ask you to state whether or not you are engaged in the purchase of scrap iron, as the representative of any Company, if so what company?

A. Yes, sir; I buy some scrap iron for a Rolling Mill.

Q. What Rolling Mill?

A. Licking & Rolling Mill, Covington, Kentucky.

Q. State whether or not the prices of scrap iron indicates to a certain extent the price of steel and iron, which goes into the manufacturing concerns, the raw steel and iron?

A. The general tendency of iron and steel market, when most other iron and steel product, scrap is up when the other iron and steel products are up, and scrap is down when the other is down; scrap is considered in a measure the thermometer of other kinds of steel.

Cross-examination.

By Mr. STRAUS, of counsel for defendants:

Q. Do you know how many different kinds of steel are used in the manufacture of harvesting machinery?

A. No, sir.

Q. Do you know what kinds of steel at all are used?

A. That question, I don't know that I am perfectly prepared to answer.

Q. Take the years 1899, 1900, 1901, 1902 and 1903, could you tell the jury what different grades of steel was used in the construction of that machine, either one of them?

272 A. Either one of them.

Q. Yes; in 1909, or I mean 1900, 1901, and 1902, take the thirty or forty grades of steel used in that machine, can you tell the various different prices?

A. No, sir; not of all of them at least.

Q. Of any particular kind; the particular grade of steel used in the construction of that machine?

A. You don't specify any particular grade of steel.

Q. Do you know what grade of steel goes into it?

A. I simply know this; at the market of this county as practically only Bessemer; Open heart, and Crucible steel.

Q. Don't you know that each steel plant manufactures from thirty to forty different grades of steel?

A. Certainly.

Q. You don't pretend to keep up with the price of all the grades of steel?

A. No, sir; I didn't say I kept up with all of them.

Q. Do you know what particular grades are used in this machine, the construction of this machine?

A. No, sir; I haven't kept up with that.

Q. Now could you tell then, the difference between the prices of the various grades of steel that go into the construction of this machine in the year 1910, and the same grades of steel that went into it in 1902?

A. Not without knowing what grade of steel was used.

Q. And you don't know what was used?

273 A. Not, except as I said before they would have to use one of those three grades of steel; that is those three makes of steel.

Q. But not the grades?

A. I don't know anything about the grades of steel they use; no, sir; except that the general conditions of the markets of the grades, would run in proportion to the quality of steel.

Q. Do you know anything about the condition of the labor market compared, say 1902, compared with 1911?

A. No, sir; except in regard to Milling; we all pay higher; I couldn't say, accurately as to the figure on that.

Q. Take the general condition of the labor market?

A. I don't have anything to do with the labor in the manufacturing.

Q. You don't manufacture at all?

A. No, sir.

Q. You employ no labor?

A. No, sir; not in the manufacturing.

Redirect examination.

By Mr. CARROLL, of counsel for the plaintiff:

Q. Take bar iron, Mr. Coleman, how do the prices of bar iron compare, during the periods I have mentioned?

A. Bar iron, what is known as refined bar iron, the prices were slightly higher in the first period than in the last.

274 Q. Between the period of 1903 to 1908 how was the price?

A. About equivalent to the first period.

Q. What about the Bessemer steel, during those periods.

A. Bessemer steel; the billet market, which constitutes the first period — than it was the last; but not a great deal of difference.

Q. What about Bessemer pig iron, during those periods?

A. Bessemer Pig Iron was not a great deal of difference.

Q. What about first second and third Southern Foundry Pig Iron?

A. They were slightly higher; No. 3 I don't know anything about.

Q. No. one and two?

A. They were slightly higher during the first period up to August, 1902, that they were up to July 21st, 1911, the last period. That is, you understand, Mr. Carroll, I am giving a general statement on that, without specifying either.

Q. Yes, sir; I understand; now, pig iron generally, how was it between those periods?

A. What class of pig?

Q. Your general pig iron?

A. You asked me about Bessemer.

Q. Any other kinds of pig?

A.. No. one and two.

Q. Yes, sir?

A. Usually when one pig is up others are or down, all of it is; that is subject to certain variations.

275 Recross-examination.

By Mr. STRAUS, of counsel for defendant:

Q. There are very great variations?

A. Yes, sir; at times.

Q. And great variations in the various grades of steel, owing to the demand for it, isn't that true?

A. To a certain extent, yes, sir.

Q. Therefore the general market of pig wouldn't determine the price of steel?

A. To a certain extent.

Q. Depending on the condition and demand for that particular grade of steel, that will largely determine its price more than the price of pig at that time?

A. Occasionally that is true.

Q. You don't undertake to tell the jury here anything about the prices of the various kinds of steel that goes into the manufacture of these machines made by this Company in 1902, or since, do you?

A. Not unless you specify the grade of steel, I wouldn't undertake to.

(And further the witness sayeth not.)

T. A. MATTINGLY, having been called as a witness on behalf of the defendant, and having been first duly sworn and being examined, testified as follows:

276 Direct examination.

By Mr. STRAUS, of counsel for defendant:

Q. Mr. Mattingly, have you been sworn?

A. Yes, sir.

Q. Where do you live?

A. Lebanon, Kentucky.

Q. What is your occupation, or business?

A. I am in the carriage and implement business.

Q. What kind of implements do you handle?

A. All kinds of farming implements; everything in that line.

Q. Wagons, and carriages too?

A. Yes, sir.

Q. How long have you been engaged in that business?

A. About seventeen years.

Q. How long have you been, if you have been, Agent for the International Harvester Company of America?

A. Since they first organized.

Q. Did you handle any mowing and reaping machines before that?

A. Yes, sir.

Q. Before that company was organized?

A. Yes, sir; every since I have been in business.

Q. What binders and mowers did you handle?

A. Handled the Champion.

Q. What have you handled since the organization of that Company?

A. The Champion and McCormick.

277 Q. Mr. Mattingly, has there been any improvements in those two machines since 1902, since the organization of that company?

A. Yes, sir; I think there has been considerable improvement.

Q. State whether or not they are better machines now than they were then?

A. Yes, sir; I regard them so.

Q. Did you get that information from the farmers who use them?

A. Yes, sir.

Counsel, for plaintiff objected to the foregoing question and answer, and the court sustained the objection; and admonished the jury not to consider the answer.

Q. What evidence have you that it is a better machine, taking

the question of repairs for instance, since 1902 state whether or not the repairs have been less than they were before?

A. I think it is a better machine from the fact that it gives better satisfaction, and we sell less repairs. It gives us better satisfaction all the way through. We have less trouble than we did in former years; that is why I think it is a better machine.

Q. Has there been any advance in the price of all of the machinery and implements, and things you handle, in your business since, 1902?

278 A. There has been an advance in everything; yes, sir.

Q. Was there any more advance in these reapers, than there was in other kind of machinery, not sold by the International Harvester Company?

A. I don't think so.

Q. What about wagons?

A. Well, I think wagons have advanced more than harvesting machinery, in my judgment.

Q. What about buggies?

A. Buggies have advanced about ten per cent?

Q. I will get you to state whether or not in your opinion the machine, take the Champion, and McCormick, and the others, are worth the money that the International Harvester Company charges for it?

Counsel for plaintiff objected to the foregoing question, but the court overruled the objection, to which counsel for plaintiff excepted.

A. My opinion is they are worth what they cost.

Cross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. You are, I believe, engaged in selling them?

A. Yes, sir.

Q. How long have you been so engaged?

A. Twelve—Seventeen years.

279 Q. Those new machines when they were put on the market, were so much better than the old ones; when were they put on the market?

A. The Champion binders is what I referred to principally.

Q. When was it put on the market, when did you first get it?

A. Seventeen years ago.

Q. You got it seventeen years ago?

A. When I began handling them?

Q. When did you get the late ones?

A. That has been in the last four to six years.

Q. Now, you say the price of machinery has gone up?

A. Yes, sir.

Q. Price of wagons has gone up?

A. Yes, sir.

Q. Don't you know that the International Harvester Company, practically controls the wagon market in this Country?

Counsel for defendant objected to the foregoing question, but the court overruled the objection, to which counsel for defendant excepted.

A. No, sir; I don't know it at all.

Q. You don't know it?

A. No, sir.

Q. You say the prices of buggies have gone up?

A. Yes, sir.

Q. Have there been any improvements in the buggies?

A. Well, yes?

280 Q. Any improvements in the wagons?

A. Well, I couldn't say that there has been any made.

Q. Now you say you began handling the machines seventeen years ago?

A. Yes, sir.

Q. The prices at that time, when you first knew the machines, were higher than they are now, weren't they?

A. It cost them—

Q. Way back in the early days?

A. No, sir; no.

Q. Always lower than they are now?

A. Some lower, yes, sir.

Q. Mr. Mattingly, don't you know as an historical fact that way back in the beginning of those machines, when they were first put on the market, that they were up treble the prices they are now?

A. Yes, sir.

Q. Those machines were constantly being improved in various ways?

A. Of course I didn't know anything about them then.

Q. They have been improved since you knew about them?

A. Yes, sir.

Q. Improvements being made right along?

A. Of course we have a better machine today.

Q. There were improvements being made every year, in the Champion, to a certain extent and all of them?

A. No, sir.

Q. There was a gradual improvement in the machines since you first knew it?

A. There has been several improvements, yes, sir.

281 Q. Since you first knew it?

A. Yes, sir.

Q. And the prices are higher now than it was when you first knew it?

A. Yes, sir.

Q. The prices lowered some from the time you first knew it up until 1902?

A. You mean lower now.

Q. The prices were lowered from the time you first knew the machine and handled it up to 1902?

A. You mean they were lower in 1902 than it was previous to that?

Q. Yes, sir; sometime previous to that?

A. Same price.

Q. Any improvements going on then?

A. No change in the machine I handled from 7 to 8 or for ten years.

Q. Prior to that time, say the machine, say fifteen years ago, there was some change in it after, in the last seven or eight years, before 1902, wasn't it?

A. In the Champion binder, the one I handled, there was no change in it from 1895 up until 1905; some wheres along there.

Q. 1905 or 1906?

A. Yes, sir.

Q. Same machine?

A. Practically the same.

Q. When was the first raise made, in that machine?

282 A. I think in 1908.

Q. Wasn't the first raise made in 1903?

A. Perhaps you may be right.

Q. Wasn't there another raise made in 1904?

A. I don't remember that.

Q. And the improvement made in 1905, as you say?

A. I don't remember the date of the advancement in the price.

Q. Mr. Mattingly, isn't it a fact that since 1907, there has been a gradual decline or decrease in the market conditions?

A. I don't understand what you mean? You mean the cost of material?

A. Yes, sir, and produce?

A. I hav-n't found it that way.

Q. How were the prices of cattle last year, and hogs?

A. I don't keep up with that.

Q. You only deal in those things you sell to the farmer and not anything you buy from him?

A. Yes, sir.

Q. You don't know anything about farming?

A. Yes, sir.

Q. How do you say things have gone up?

A. Corn is higher.

Q. How much higher last year than the year before?

A. I don't remember.

283 Redirect examination.

By Mr. STRAUS, of counsel for defendant:

Q. Mr. Mattingly, you sell wagons and buggies?

A. Yes, sir.

Q. You don't sell them as agent for the International Harvester Company of America, do You?

A. No, sir.

Q. You represent different people as to that class of goods?

A. Yes, sir; I handle three different kinds of wagons.

Q. From different firms?

A. Yes, sir.

Q. You handle a good deal of other machinery not as the agent for the International Harvester Company of America?

A. We handle nearly everything; handle everything made by other people except harvesting machinery.

Recross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. You say made by other people, what do you mean, made under other names?

A. Made by other people.

Q. Manufactured under other names, is that what you mean?

A. Yes, sir; I mean made by manufacturers of entirely different names, and really entirely different concerns.

284 Q. How do you know that; who told you that, Mr. Mattingly?

A. The concerns I have been dealing with for seventeen years.

Q. Who told you; what concerns have you been favoring that were independent, in the wagon line.

A. The Owensboro Wagon Company; and also the Birdsell Manufacturing Company.

Q. Did they tell you they were independent companies?

A. No, sir; I didn't ask them that question.

Q. Have you had any dealing with the Kentucky Manufacturing Company?

A. No, sir.

Q. You never asked them?

A. No, sir; I never handled their goods.

(And further the witness sayeth not.)

ED TYLER, having been called as a witness on behalf of the defendant, and having been first duly sworn, and being examined, testified as follows, to-wit:

Direct examination.

By Mr. STRAUS, of counsel for defendant:

Q. Where do you live?

A. Live in Bullitt county; out the pike four miles.

Q. Are you a farmer?

A. Yes, sir.

Q. How long have you been farming out there?

A. All of my life; twenty-five years.

285 Q. Do you use any farming machinery, such as binders and mowers?

A. Yes, sir.

Q. What binder do you use?

A. Deering.

Q. How long have you been using a Deering?

A. About twenty-five years.

Q. How long have you—How many have you bought in that time?

A. Three?

Q. I will get you to state whether or not your experience with three machines, what has been with reference to whether the machine has been improved or not?

A. Yes, sir; there is improvements on all of them, I think, the one I have is a better machine than the first one I had.

Q. Better than the second you had?

A. Yes, sir; I think so.

Q. Which machine gives the best satisfaction, the first, second or last one?

A. Well, I think the last one is easier handled, a nicer machine than any of them.

Q. How long have you had that machine?

A. About three years, I think.

Q. I will get you to state whether or not, in your opinion Mr. Tyler, that machine is worth what you paid for it?

Counsel for plaintiff objected to the foregoing question, but the court overruled the objection, to which counsel for plaintiff excepted.

286 A. When it comes to the price of making machinery; it had been worth it to me; I don't know anything about the cost of machinery, or anything of the kind.

Cross-examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. When you bought that machine you had to pay that price or not get it, didn't you?

A. Yes, sir; I suppose I did.

Q. You thought it was worth the price because you needed the machine?

A. Yes, sir; I had to have the machine.

Q. When did you buy the first machine, as well as you remember?

A. Twenty four or five years ago.

Q. When did you buy the second one?

A. It has been ten or twelve years ago.

Q. So you kept the first machine about thirteen or fourteen years?

A. Something like that; and the next machine I used about ten years.

Q. It was an improvement over the first, to some extent?

A. Yes, sir.

Q. And the last machine, you used how long?

A. I got it; have cut three crops with it.

287 Q. You don't know whether it is going to last as long as the others or not?

A. No, sir; it is a nice machine.

Q. The others were nice?

A. I thought so at the time.

Q. Did you pay more for the first, second machine, or did you pay the same price?

A. I paid more for the first than I did for the second.

Q. And kept that about fourteen years, and bought the other machine which was an improvement on the first?

A. Yes, sir; and paid less.

Q. You paid more for the last than you did for the first or second, didn't you?

A. Paid more than I did for the second.

(And further the witness sayeth not.)

Court here adjourned until one o'clock and met at said time pursuant to said adjournment.

Counsel for defendant here announced they would rest their case for the present.

And thereupon the plaintiff introduced the following evidence in rebuttal.

288 B. M. SHEPHERD, having been called as a witness on behalf of the plaintiff and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By MR. CARROLL, of counsel for plaintiff:

Q. Have you been sworn, Mr. Shepherd?

A. Not this morning.

Q. You were sworn yesterday?

A. Yes, sir.

Q. What is your name?

A. B. M. Shepherd.

Q. Where do you live?

A. Thirty-seven, Broadway, Louisville.

Q. Where were you born and raised?

A. Bullitt county up to the last two months.

Q. What business have you been engaged in?

A. The last twenty or twenty five years, the lumber business.

Q. What character, or what branch of the lumber business?

A. Mostly hardwood.

Q. You mean buying and selling it?

A. Yes, sir.

Q. Are you familiar with the market conditions of lumber during the time you have been so engaged in that business?

A. I think I pretty well know.

Q. What, if you know, Mr. Shepherd, state whether or not there has been any increase in the price of pine, from 1900 up to the present time, and especially yellow pine, used for tongues in binders and mowers, the character of pine used for that purpose?

A. My judgment is, and my experience, that it would be about a half a cent a foot, or five dollars a thousand.

Q. Where does this pine grow?

A. In Mississippi and Louisiana.

Q. Have you any experience in the market price of that pine?

A. I have been in touch with it all along the line, I have been on the market.

Q. What if any, has been the increase of hickory, from 1900 to 1911?

A. About ten dollars a thousand.

Q. About ten dollars a thousand.

A. Yes, sir.

Q. About a cent a foot?

A. Yes, sir.

Q. Have you been engaged in buying and selling that character of timber during this period?

A. Yes, sir.

Q. What, if any, has been the increase in the price of poplar and sugar tree?

A. Poplar advanced about two cents a foot.

Q. Sugar tree advanced or not?

A. No, sir.

Q. Has it ever advanced any during that period?

A. Yes, sir; about a half a cent a foot.

290 Cross-examination.

By Mr. STRAUS, of counsel for defendant:

Q. Did you ever handle any long leaf yellow pine at all?

A. No, sir; I never handled it myself; I have been with parties who handled it all the time.

Q. You never sold any?

A. No; not long leaf yellow pine.

Q. Therefore, you don't know what they got for that, in the manufacturing plants, and don't know what they paid for it?

A. No; it has been less than oak, and oak has advanced five dollars.

Q. You never bought any or sold any, how do you know.

A. I have seen them buy it, and at prices about five dollars less than oak all along.

Q. You never handled any of that stuff at all?

A. No, sir; I never handle any tongues, or poles of pine, I have seen the price, and have seen it sold.

(And further the witness sayeth not.)

S. C. BRIDWELL, having been called as a witness on behalf of the plaintiff and having been first duly sworn, and being examined, testified as follows:

291 & 292 Direct examination.

By Mr. CARROLL, of counsel for Plaintiff:

Q. Mr. Bridwell, where do you live?

A. Shepherdsville.

Q. What is your business?

A. I am in the general blacksmith business.

Q. How long have you been engaged in that business?

A. I have been here eleven years.

Q. Prior to coming here, what business were you engaged in and where?

A. Mount Washington; same business.

Q. How long have you been engaged in that business?

A. Twenty five years; I reckon.

Q. Mr. Bridwell, about, for the last seven or eight years, or longer, about how much iron and steel both together do you handle in the course of a year?

A. You mean new material?

A. Yes, sir.

Q. Well, pretty hard to tell, without going over my books; a good deal, perhaps from something like one thousand pounds of shoes; and in the steel, perhaps a half dozen sets of tires, either light or heavy.

Q. Mr. Bridwell, during the period you have been engaged in this business have you been buying material?

A. Yes, sir.

Q. State whether or not the prices of iron and steel, such as you use, was higher during the years 1899, 1900, 1901, to July or August, 1902, or lower, than they were during the years 1910, 1909, and up to July 1911, whether or not there was any difference in the prices?

293 A. There is some that is higher and some that is lower.

Q. What is the average?

A. I can buy bar steel today, heavy bar steel such as wagon tires for \$1.90; we pay for light tires, such as is used on buggies \$2.00.

Q. What did you pay for them during the years 1900, 1901, and 1902?

A. I have paid as high as \$2.10.

Q. What kind of metal, did you say some had increased in price, what is that?

A. I think manufactured goods; shoes and nails, such as that are higher than when I first commenced business.

Q. That is the manufactured articles?

A. Yes, sir.

Q. The raw material?

A. It seems to me like it is cheaper.

Q. I will ask you to state whether or not, during that period you have been in the habit of selling scrap iron?

A. Yes, sir.

Q. State whether or not the price of scrap iron is higher or lower,

and has been for the last two years, than it was prior to August, 1902?

A. It is lower now than I have ever knowed it to be.

Q. How long has that continued?

A. It has gradually been going down for four or five years.

Q. How do the prices now compare with the prices of 1902?

A. Iron I get thirty five cents for now, I used to get sixty five and seventy cents, and along in there.

294 Q. Mr. Bridwell, I will ask you to state whether or not you have examined, or ever worked on any of the machinery or have you had any occasion to work on any of it?

A. Yes, sir.

Q. Are you familiar with the various character, and makes of harvesting binders, that are used in this country and come in your shop?

A. What is generally sold here.

Q. I will ask you if you ever examined any of the binders or mowers sold prior to 1902, and if you have examined any subsequent to 1902, if you have examined them, and state whether or not, you made said examination for the purpose of finding the difference in them, and what was the result of your examination?

A. I never made a thorough examination of them; I only worked on the parts and pieces, that were broken, you know, I find mighty little difference in the make of machinery such as mowers and binders now, and four, eight or ten years back.

Q. Have you had any old machines up at your shop, have you any machines in your shop?

A. Yes, sir, a good many of them; at the beginning of hay harvest, there is machinery, mowers two or three old binders, that look like they are eight or ten years old.

Q. Have you had any Deering binders up there?

A. No, sir.

295 Q. Champion or McCormick?

A. I think there is a McCormick mower, perhaps there and perhaps a Deering mower.

Q. Those old mowers or new ones?

A. They look to be old ones.

Q. Do you know how long they have been in service?

A. I heard one man say——

Mr. STRAUS: We object to what he heard some man say.

The COURT: Sustains the objection.

Q. From their general appearance, are they mowers that were made more than nine years ago?

A. Yes, sir; I think one of them ten years; has been in use ten years.

Q. Have you compared those machines with any made four or five years ago?

A. I can't see any difference in the McCormick mowers; I can't see any difference in the new one and the old.

Q. Have you been, since you have been blacksmithing, Mr. Bir-

well, engaged in repairing and working on that character of machinery?

A. Yes, sir; pretty much every since I have been in the business, I have had something of that work to do.

Q. You said, I believe there was a slight raise in this manufactured goods, about how much was that raise?

A. I can't tell; I can tell to my mind shoes and bolts, and horse nails; for some reason I took particular notice to them goods; I have been using so much of it, as I do; there is one kind of shoe I bought for ten years for three dollars and seventy five,
296 and three ninety, and it cost me now four ten and four twenty, along in there.

Q. That is, when you say three seventy five, that is that much per hundred pounds?

A. Yes, sir.

Q. And now you buy them for four and four ten?

A. Yes, sir; along there.

Cross-examination.

By Mr. STRAUS, of counsel for the defendant:

Q. What about the increase in labor, in the last ten years?

A. I suppose there has been some little; there has with me.

Q. All of the labor you have had to hire has been higher?

A. I pay a little more than I did when I first commenced business.

Q. As to these machines, you don't claim to be an expert as to those machines?

A. I wouldn't suppose so, like the man that built them; while I repair some old parts.

Q. Some old machines are brought to you to repair; but most of the repairs are bought from the Machine people?

A. Most of them are; we get the parts at times for the people, get them and put them in the machines.

297 Q. You don't make the repairs?

A. Some, we do.

Q. Very few parts you can make?

A. Yes, sir; take the steel parts, we can duplicate that, when it comes to the mal-able parts, we have to get them from the factory.

Q. The castings, you have to get too?

A. Yes, sir.

Q. You can't say whether the new machine is more efficient than the others; you don't know?

A. What is the question?

Q. By more efficient, I mean more satisfactory to the farmer; you don't know?

A. No; I couldn't say as to that; whether it gives any more satisfaction. I have stated I couldn't see any difference in the parts and makes.

Q. They looked alike to you?

A. Yes, sir.

Q. You are no expert, and don't undertake to point out the improvements?

A. No, sir.

Mr. CARROLL:

Q. It would take a pretty good expert to show you the difference wouldn't it?

(No answer.)

(And further the witness sayeth not.)

298 C. O. PARRISH having been called as a witness on behalf of the Plaintiff, and having been first duly sworn, and being examined, testified as follows:

Direct examination.

By Mr. CARROLL, of counsel for plaintiff:

Q. Have you been *sown*?

A. I was sworn yesterday.

Q. State your name to the jury?

A. C. O. Parrish.

Q. Where do you live?

A. Mount Washington.

Q. How long have you lived there?

A. All of my life.

Q. Is that in Bullitt county?

A. Yes, sir.

Q. What business are you engaged in?

A. Wagon and carriage business, and general repair business.

Q. You have been so engaged for how long?

A. I have been there since 1878; at Mount Washington.

Q. Mr. Parrish, during that time, or during the last ten years, have you been gathering up and selling scrap iron at any time?

A. Yes, sir.

Q. State whether or not the price of scrap iron is increased or decreased?

A. Well, it has decreased in the last few years.

Q. Much or little?

299 A. Well, as well as I could call to mind, we are getting sixty five cents a hundred now, and now we are getting thirty to thirty — cents.

Q. How long ago were you getting sixty and sixty five?

A. I expect it has been five years.

Q. Say nine or ten years ago, what price were you getting?

A. Well, I couldn't tell you, Mr. Carroll, definitely; it was up pretty well though, at that time; it is cheaper now than it has ever been.

Q. What is the price of other iron you use in your shops, Mr. Parrish, at the present time, as compared with the prices nine or ten years ago?

A. At the present?

Q. Yes, sir.

A. Twenty five or thirty per cent less.

Q. Twenty five or thirty per cent, or twenty five or thirty cents on the hundred pounds?

A. On the hundred pounds; it depends on the kind of iron; different grades of Norwegian, Bessemer and Stone Coal.

Cross-examination.

By Mr. STRAUS, of counsel for defendant:

Q. Do you know what the price of iron was in 1908?

A. I couldn't call to mind right exactly the date.

Q. 1907?

A. I am just going now four or five years back; I got sixty and sixty five cents; and now I get thirty and thirty five cents for scrap iron; at that time we sold wrought iron too in another junk, 300 and castings.

Q. I am speaking about other kinds of iron; do you know of the three or four classes of iron used for manufacturing reapers?

A. Do I, No, sir.

Q. Do you know what kinds of steel or iron is used?

A. No, sir.

Q. Do you know the price of those grades of iron or steel?

A. No, sir.

Q. You don't know them for any of the years?

A. No, sir.

Q. Don't know how many kinds of steel are used?

A. No, sir.

Q. Has labor increased in the last seven or eight years?

A. Yes, sir; I suppose it has, until recently it has.

Q. The price of labor?

A. I mean——

Q. The price of labor the wages?

A. Well, of course we have to pay more for labor; I don't know how the companies are, the manufacturers; we pay more.

Q. You pay more?

A. Yes, sir.

Q. The cost of living is higher?

A. Yes, sir; the cost of living is higher.

(And further the witness sayeth not.)

301 Counsel for plaintiff announced they were through with their evidence; thereupon counsel for defendant announced they were through with their evidence, and this was all the evidence heard on this trial.

Mr. STRAUS: I want to move the Court to send the Jury down to look at a Deering Binder all set up down in the street down town; I want them to look at it.

Mr. CARROLL: We object to that.

The COURT: Sustain the objection, and overruled the motion.

Mr. STRAUS: We want to except. And want to move the court

to exclude from the consideration of the jury all of the testimony of the witnesses Coleman, Bridwell, and Parrish, concerning the price of scrap iron.

Mr. CARROLL: We object to that.

The COURT: Sustain the objection and overruled the motion.

Mr. STRAUS: To which we except. We want to move the court to instruct the jury to peremptorily find for the defendant.

Mr. CARROLL: We object to that.

The COURT: Sustain the objection and overruled the motion.

Mr. STRAUS: To which we except.

302 STATE OF KENTUCKY,
 County of Bullitt:

I, Sam W. Eskew, Special Official Stenographer for the Bullitt Circuit Court, do certify that the foregoing transcript, of 255 pages, is a true and correct copy of all of the evidence introduced and heard and offered to be introduced and rejected by the Court, and all exceptions, objections and avowals, concerning the same, as well as all papers and exhibits offered to be, or used as evidence in the trial.

Witness my hand this the 26th day of September, 1911.

SAM W. ESKEW,
Special Official Stenographer Bullitt Circuit Court.

Examined and approved this — day of September, 1911.

SAM'L E. JONES,
Judge Bullitt Circuit Court.

303 On the same day, to-wit, October 16, 1911, appellant's counsel filed with the foregoing transcript the following statement on appeal:

Court of Appeals of Kentucky.

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Statement.

1. The names of the Appellant, and of the Appellee, are as stated above.

2. The Judgment herein appealed from was rendered on September the 9th, 1911, and may be found on Page 14 of the record.

3. Neither a summons, nor a Warning Order is desired by the Appellant.

4. Appellee's counsel are Frank E. Daugherty, whose address is Bardstown, Ky.; and Charles Carroll, whose address is, Paul Jones Bldg., Louisville, Ky.; the Attorney General, Frankfort, Ky.

FRANK P. STRAUS,
ARTHUR M. RUTLEDGE,
Att'ys for Appellant.

304 Afterwards at a Court of Appeals held in and for the Commonwealth of Kentucky at the Capitol at Frankfort on the 20th day of October, 1911, the following order was entered, to-wit:

INTERNATIONAL HARVESTER Co.

vs.

COMMONWEALTH,

Bullitt.

Came the parties by counsel and filed agreement and motion to docket this case for the present term, and to advance and for oral argument, which motion is submitted, and the court being advised, said motion is sustained, and this case is ordered docketed for the present term advanced and an oral argument granted.

Afterwards at a Court of Appeals held in and for the Commonwealth of Kentucky as aforesaid on the 28th day of November, 1911, the following order was entered:

INTERNATIONAL HARVESTER Co.

vs.

COMMONWEALTH.

Bullitt.

This case came on to be heard and was argued by John K. Todd and L. S. Willis for the Company and by Charles Carroll for the Commonwealth and the argument continued until tomorrow morning at 11 o'clock.

Afterwards at a Court of Appeals held as aforesaid on the 29th day of November, 1911, the following order was entered, to-wit:

INTERNATIONAL HARVESTER Co.

vs.

COMMONWEALTH.

Bullitt.

This case came on for further hearing and argument was concluded by Charles Carroll for the Commonwealth and A. P. Humphrey for the Commonwealth and the case submitted.

305 Afterwards at a Court of Appeals held in and for the Commonwealth of Kentucky, as aforesaid on the 16th day of March, 1912, the following orders and judgment were entered:

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Appellant,
vs.
COMMONWEALTH OF KENTUCKY, Appellee.

Appeal from Bullitt Circuit Court .

The court being sufficiently advised it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed and that appellee recover of appellant 10% damages on the amount of the judgment superseded herein. Which is ordered to be certified to said court.

It is further considered that appellee recover of appellant its cost herein expended.

At the same time, to-wit, March 16, 1912, the Court of Appeals of Kentucky delivered an opinion in words and figures following, to-wit:

306

Court of Appeals of Kentucky.

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Appellant,
vs.
COMMONWEALTH, Appellee.

Appeal from Bullitt Circuit Court.

Opinion of the Court by Judge Settle.

This action was instituted in the court below against the appellant, International Harvester Company of America, by the appellee, Commonwealth of Kentucky, to recover of it the penalty prescribed for a violation of the provisions of section 3915 Kentucky Statutes, as amended by section 3941a Kentucky Statutes; the first being known as the anti trust act of May 20th, 1890, and the last as the Farmers' Pooling Act of March 21st, 1906.

The prosecution covered the year beginning July 21st 1910, and ending July 21st 1911. The trial resulted in a verdict and judgment inflicting upon appellant a fine of \$5000.00, and from that judgment it has appealed.

Two grounds of reversal are relied on; 1st, That the verdict is flagrantly against the evidence, 2nd, That the trial court erred in instructing the jury.

Appellant filed a demurrer to the petition which was overruled.

It appears from the evidence introduced in appellant's behalf
307 that its affirmative grounds of defense were, that the increase in prices of machines sold by it was due (1) to the increased cost of the materials entering into their manufacture, (2), to the increased cost of labor employed in their manufacture; (3), the increased cost of putting the machines on the market; (4), the increase in the efficiency of the machines.

The demurrer not only put in issue the general sufficiency of the petition, but also assigned as a ground an alleged conflict between section 3915, Kentucky Statutes, as construed by this Court in connection with section 3941A, and the Fourteenth Amendment to the Constitution of the United States. We think the demurrer was properly overruled. The objection raised by it to the sufficiency of the petition was not well taken, as tested by the construction given sections 3915, and 3941a, Kentucky Statutes, in *International Harvester Company of America vs. Commonwealth*, 137 Ky. 668, and on the second appeal of the same case in 144 Ky., 483, it stated a cause of action.

As to the Federal question raised by the demurrer, it is sufficient to say that it was decided adversely to appellant's contention in the case of the *Commonwealth vs. International Harvester Co.*, 131 Ky. 551, and we adhere to that ruling.

Indeed, by the opinion in that case it was not only held that the sections, *supra*, were not in conflict with the Fourteenth amendment to the Federal Constitution, but that by construing section 3941a as an amendment to section 3915, as was evidently intended by the legislature, they could properly be and were harmonized. In effect the same conclusion had been arrived at by the court in the previous case of *Owen County Burley Tobacco Society vs. Brumback*, 128 Ky. 137.

It may be said, that since these two cases were decided, there is no law in this state which forbids the existence of trust pools or combinations, or that prohibits them from fixing and maintaining the price or prices of their products or commodities, so long as they are not sold for more nor less, than their real or market value. Obviously, the real value of any marketable commodity is its market value under fair competition, and under normal market conditions. It goes without saying, however, that such value would increase or diminish according to the increase or decrease in the market value of the ingredients, or the increase or lowering of the price of the labor, which produces it. The court had in mind these conditions when in *International Harvester Company of America vs. Commonwealth*, 137 Ky., 668, it said:

"When, therefore, the prosecutions show (1) that there has been a combination among all or any of the producers of a commodity of merchandise, by which its output is restricted, or controlled alone by the confederates in the scheme; (2) that the market price of the article was then materially enhanced; (3) that the conditions affecting commerce in general are normal; (4), that the competition otherwise than for the combination complained of would be fair;—there would be established *prima facie*, a case of violation of the statute."

309 In further elaboration of the subject the following additional excerpt from the opinion will prove instructive.

"Therefore, it is not enough under a prosecution under our statute to show that there has been a combination among producers of their products or plants * * *; nor is it enough to show in addition, and no more, that the price of the commodity was

subsequently advanced * * * . It is necessary to show that the general conditions affecting the market value of that commodity were normal, and that but for the combination complained of the competition would have been fair; that is natural and usual."

In the opinion on the second appeal of the same case, (*International Harvester Company of America vs. Commonwealth*, 144 Ky., page 403), is a statement indicating the various elements to be taken into the account in determining what constitutes a violation of the statute in question.

"But the fact that a combination was formed, in connection with the legal presumption that it was formed for the purpose of controlling and fixing prices, is sufficient to show in the absence of countervailing evidence, that an advance in the price prevailing before the combination was entered into, enhanced the price of the article above its real value; if market conditions before and after the advance were substantially the same; and the cost of production has not materially increased, or in proportion to the advance.

And so we think in prosecutions under the statute when the
310 Commonwealth has shown by evidence and legal presumption the combination to fix, control and regulate prices, with evidence of an advance in prices by the combination under substantially the same market conditions that existed before the advance, is sufficient to sustain a verdict of guilty in the absence of evidence that the advance was justified by changed market conditions, or a corresponding increase in the cost of production. The offense under these statutes does not consist merely in forming the combination or trust and in fixing or regulating the price, or in limiting the production, but in addition thereto the price must be enhanced above or depreciated below its real value by the pool, trust or combination. Now, it is manifest from this that it is the sale of the article at a price above or below its real value that constitutes the overt act of guilt, and it would seem to follow from this that each sale at a price in violation of the statute would be a separate offense."

It is now necessary to apply the principles thus stated to the facts of this case in order that we may determine whether the fine imposed by the verdict and judgment upon the appellant was authorized. Our reading of the record convinces us that the following facts were established by the evidence of the Commonwealth.

1st. That six companies or corporations engaged in the manufacture and sale of harvesting machines and all doing business in this state, viz: Champion Machine Company; Deering Machine Company; McCormick Machine Company; Plano Machine Company;
311 Milwaukee Machine Company, and Osborne Machine Company, between which there had been previous competition, entered into a combination to fix and regulate, and did fix and regulate, the prices at which their machines should be sold throughout the United States; this combination being effected by transferring the ownership and control of the companies named and the business of each of them to the appellant corporation, known as the International Harvester Company of America, which

since the combination, has controlled all the business formerly done by the six companies separately. 2nd. That immediately following this combination the competition which had theretofore obtained between the several companies ceased and the prices of the machines formerly sold by each of them were by appellant increased above the prices at which they were sold prior to the combination; the increase in price of binders being \$12.00, mowers \$4.00, and hay rakes \$2.00. 3rd. That the market conditions were normal both before and after the combination. 4th. That the machines named were sold and offered for sale by appellant at the increased prices in this state and in Bullitt County, since the combination was effected, and within a year before the institution of this action.

Proof of the foregoing facts was sufficient to create the legal presumption that the increase in the price of the machines was an increase above their real value and was an intended consequence and result of the combination; as previously stated, their real value as marketable commodities being their market value under fair competition and under normal conditions.

Upon the Commonwealth's showing of the above facts, the burden of proof was shifted to appellant to show that such increase
312 in price on the machines after the combination, was due to the increased cost of material used in their manufacture, the increased price of the labor employed in their production, or increase in the cost of putting them on the market.

The combination of the several machine companies and their absorption by appellant in 1902, resulted in at least three increases in the price of the machines, sold in the course of business by appellant, between the years 1902 and 1908; the first being made in 1903, and shortly after the combination was effected. It is not perceived how any increase in the cost of material or labor entering the production of the machines or cost of putting them on the market, occurring, as shown by the evidence, after the first increase in the price of the machines, could have caused that increase.

While appellant's evidence conduced to prove an increase since 1902, in the cost of both the material and labor entering into the production of the machines, it is not to be overlooked that the cost of putting them on the market was greatly reduced.

According to the evidence the six companies which formed the combination, each maintained in this state a chief office and each its own agents and employes. After the combination, five of these chief offices were abolished and a large number of agents and employes discharged. A witness, Crenshaw, who became agent for ap-
313 pellant in a district of eight counties, including Bullitt, testified that in his district alone the combination resulted in a reduction of expenses to the amount of \$7000.00. J. L. Garner, appellant's

general agent in a territory of 43 counties of this state testified that he sold in those counties, since the combination, 2000 mowers, 600 binders and 1200 hay rakes. As since the combination the increase of price placed by appellant on each binder is \$12.00, on each mower \$4.00, and on each hay rake \$2.00, the aggregate of these sales realized from the increase in price on

the machines disposed of by Gardner in the 43 counties, was \$17,600.00.

On the other hand, if, as testified by Crenshaw, there was, in putting the machines on the market in his district of eight counties, a saving in expenses of \$7000.00, the amount saved in the 43 counties would be about \$35,000.00, and in the entire state a proportionately larger sum.

We have been unable to discover in the record any contradiction of this testimony of Gardner or Crenshaw. It would seem, therefore, that the increase in the selling price of the machines could not have resulted from an increase in the price of labor and material or other causes urged by appellant, in view of the lessened expense of putting the machines on the market. In other words it is fairly apparent from the evidence that the reduction of the expense in putting the machines on the market, resulting from the combination, largely exceeded any increase in the cost of labor and material.

While it is true a number of experts testified for appellant that there had been an increase since the combination, in the cost of material from which the machines are manufactured such increase being as they claimed about 20 percent on steel 25 percent on pig iron, and perhaps nearly as great a percent on timber leather and paints—a number of witnesses introduced by appellee, 314 some of them engaged in the harvesting machine business and others dealers in both steel and pig iron, testified that while there was some increase in the price of the metals named between 1903 and 1908, from 1909 to 1911, there was a corresponding decrease in prices; and from their view of the matter, covering the period from 1903 to 1910, the average price on these metals and other materials remained practically the same.

It appears from the evidence that about 85 percent of the material in the machines sold by appellant is metal, the remaining 15 percent being wood and leather, mainly wood. It further appears from the evidence that the Wisconsin Steel Company, a steel manufacturing plant, though separately incorporated, is subsidiary to and owned by the appellant corporation, and furnishes to it sixty percent of the steel used in manufacturing its machines. What it costs appellant to manufacture through the Wisconsin Steel Company the steel furnished it by that Company does not appear from the evidence, but it is legitimate to presume that the steel thus obtained by it is secured at prices greatly below what it would have to pay if the steel were obtained from similar manufactories in which appellant owns no interest and over which it has no control.

It is noticeable throughout the bill of evidence that none of the expert witnesses introduced by appellant would state in figures the cost of manufacturing any one of the machines sold by it. Certainly such of these witnesses as engage in their manufacture knew the precise cost of each machine and should have been able to state it.

Some of the appellant's witnesses also testified that the increase

315 in the price of labor had been gradual since 1902; indeed, that it had in these years increased 27½ percent. This estimate was arrived at by adding the gross number of hours the officers and employes labored in a given time each year and dividing it by the aggregate amount paid for the labor during the same time. They failed, however, to segregate the skilled from the unskilled labor, or to differentiate the several classes of labor, that it might be known how much of it was paid for by the hour or day or how much by the job or piece of machinery; nor did any of them state what proportion the cost of the labor bore to the entire cost of the machines.

We are unable to see that the evidence adduced on the trial by appellant ought, as insisted by its counsel, to have convinced the jury that the advance in the price of its machines was attributable to changed market conditions, or increased cost of labor and material.

Without further discussing appellant's evidence, it is deemed proper to say that it does not appear to present all the facts upon which its defense is claimed to rest, but rather to withhold such of them as would reveal the sources of profit appertaining to its business. It is not putting a tortured construction upon the evidence to say that, as a whole, it conduces to prove that there was a combination between the several companies composing the appellant company, to fix, control and regulate the price of harvesting machines in this state and in Bullitt County, and that as a result thereof such machines were sold by appellant in that county within a year before the institution of this action, at increased prices and beyond their real value. Moreover, that the advance in the price of the machines was

316 not attributable to market conditions or increased cost of labor or material.

We think there was also evidence conducing to show that the general conditions affecting the market value of the machines were practically the same after the combination and when the sales in Bullitt County were made, as before the combination, that is normal, and that but for the combination complained of the competition would have been fair and free.

It is, however, insisted for appellant that the increased efficiency of the machine, is also an element to be considered in determining whether the increased prices at which the machines were sold were above their real value. Some of appellant's witnesses did testify as to the increased efficiency of the machines, growing out of improved construction from the use of modern inventions and better material whereby the necessity for and expense of repairing them is lessened to appellant and purchasers of the machines, but to what extent, if at all, this should add to the price of the machine was not made clear. One or more of these witnesses admitted that the increased efficiency of the machines relieved appellant of the expense of keeping in its employ the many expert machine repairers it formerly retained in its service and paid, whether at work all the time or not.

Several witnesses introduced for the Commonwealth testified that they owned and were familiar with such machines and that those

sold by appellant since the combination was effected were not more efficient than they were before.

It was also in evidence that when first invented, such machines were much less efficient than now and far more costly; and that new inventions, better material and better workmanship, have
317 brought them to their present high state of efficiency. It is, however, equally true, that along with their increase in efficiency there has been a corresponding decrease in the price of the machines, and they can now be purchased at less than half their original price. So, in view of these facts, there is room to doubt whether proof of the increased efficiency of the machines should have had any weight with the jury in determining whether the increase in the price was proper. However, the evidence on the question of increased efficiency all went to the jury, and was considered by them with other evidence in the case.

Our review of the record furnishes no reason for sustaining appellant's contention that the verdict was flagrantly against the evidence. Appellant complains of instruction No. 1 on the ground, as alleged, that it allowed a verdict of guilty, if appellant, in Bullitt County and within a year before the institution of the action, entered into a contract with any agent which contemplated sales of its machines in that county in pursuance of a combination with others to fix and control prices. This feature of the instruction was not, in our opinion, misleading to the jury or prejudicial to the appellant, as in the same connection, as well as in other parts of that instruction and also in instruction No. 2, the jury were told that a sale of one or more of the machines by appellant in Bullitt County within a year before suit, resulting from the combination complained of and at a price above its real value, was necessary to a recovery by the Commonwealth of the statutory penalty. Moreover, sales of machines in Bullitt County within the time indicated were admitted by appellant. Furthermore, the instruction is in the form approved
318 by us in the case of *International Harvester Company of America vs. Commonwealth*, 137 Ky., 668, and we are concluded by that approval.

Appellant also makes complaint of the trial court's refusal to give the following instruction offered by it:

"In determining the real value of the machines sold by the defendant, the jury should consider the improved condition of the machines, if they believe from the evidence such improvement enhanced its real value."

We do not think the refusal of this instruction was error. The instruction was improper as it singled out and gave undue prominence to only one of the several matters relied on by appellant as justifying the increase in the price of its machines; and besides, the ground of defense, with respect to which it sought to advise the jury, was in substance and meaning sufficiently presented by the instruction given.

Our conclusion is that the record furnishes no cause for disturbing

the verdict, therefore, the judgment is affirmed. The whole Court sitting.

J. F. COMBS,
JAS. BREATHITT,
CARROLL & CARROLL,
T. C. CARROLL,
F. E. DAUGHERTY,

For Appellee.

FAIRLEIGH, STRAUS & FAIRLEIGH,
HUMPHREY & HUMPHREY,
ARTHUR M. RUTLEDGE.

For Appellant.

319 Afterwards at a Court of Appeals held as aforesaid on the 19th day of April, 1912, the following order was entered, to-wit:

INTERNATIONAL HARVESTER COMPANY OF AMERICA

vs.

COMMONWEALTH.

Bullitt.

Came the appellant by counsel and filed a petition with notice and moved the court to grant a rehearing herein, which motion is submitted with leave to appellee to file a response within seven days.

The petition for rehearing filed by the foregoing order is in words and figures following, to-wit:

320 Court of Appeals of Kentucky.

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Appellant,

v.

COMMONWEALTH OF KENTUCKY, Appellee.

On Appeal from Bullitt Circuit Court.

Petition for Rehearing by Appellant.

We do not propose in this petition to re-argue the case so far as concerns the errors assigned, the giving and refusing of instructions, and the failure of proof. We do, however, desire to call the court's attention again to the Federal questions involved. Upon this submitted the court, in its opinion, used the following language: (147 Ky., 564.)

"As to the Federal question raised by the demurrer, it is sufficient to say that it was decided adversely to appellant's contention in the case of the Commonwealth v. International Harvester Co., 131 Ky., 551, and we adhere to that ruling. Indeed, by the opinion in that case it was not only held that the sections, *supra*, were not in conflict with the Fourteenth Amendment to the Federal Constitution,

but that by construing Section 3941a as an amendment to Section 3915, as was evidently intended by the Legislature, they could properly be and were harmonized. In effect the same conclusion had been arrived at by the court in the previous case of 321 Owen County Burley Tobacco Society v. Brumback, 128 Ky., 137."

The opinion in the case of Commonwealth v. International Harvester Company, 131 Ky., 551, referred to in the above extract, was that of a bare majority of the court. In the dissenting opinion it was pointed out that to leave to a jury the question as to whether the price of a given article was above or below the reasonable value of that article rendered the law so uncertain that it would be impossible for anyone to tell in advance whether he was violating it. In other words, unless the vendor of an article struck the exact mean between too low a price and too high a price, such exact mean to be determined by a jury, the vendor would be guilty of a crime.

There are many elements which enter into the price that may be charged by the vendor for any article he may desire to sell. Thus, take the element of cost; it may be small or great as the skill of its producer may determine; one producer may have economical methods, another wasteful methods; one vendor may have an economical system of putting his wares upon the market; another, a more extravagant system; there may be a scarcity of the article and many buyers desiring it; there may be a surplus of the article, and many sellers desiring to dispose of it. Take the case of an agricultural product—the intrinsic value of wheat or corn or hay or tobacco one year is no greater than in another year, but as there is a good season or a bad season the price fluctuates. It costs no more to raise one of these agricultural products where the crop is good in one section and bad in another, than it does to raise the same quantity of the product where the crop is good in all sections. As population increases there is an increased demand for many articles, 322 As the ability of men to buy increases there are more who are willing to pay the larger price for the same article or for a better article.

It so happens that Kentucky is mainly an agricultural and not a manufacturing State. When, therefore, it is left to a jury to say whether a particular article is sold at a price greater than its real value, if it is an agricultural product, it is submitted to a jury to say whether the price of that which they ordinarily sell is greater than it should be. On the contrary, if the product happens to be one of manufacture, there is submitted to a jury which buys, the question as to whether the price is greater than it should be.

We submit that the history of anti-trust legislation in Kentucky since and including the year 1906, shows that it was the purpose of the Legislature to enable the farmers of the State to obtain a higher price for their products by allowing them to combine among themselves and put the control of such agricultural products in the hands of one person, rather than have such products open to free competition among sellers. And we further submit, that the enforcement of the law has been along these lines.

We have no complaint whatever to make against the policy of the Legislature of Kentucky in the adoption of the Act of March 21, 1906 (Acts of 1906, p. 429, Ky. Stat., Sec. 3941a), nor of its adoption of the Act amending the third section of this Act, approved March 13, 1908 (Acts of 1908, p. 38, Ky. Stat., Sections 3941a and 1358b).

We submit that not only is the purpose of these acts explained on their face but also their purpose is indicated by the manner in which, since their passage, the anti-trust laws of Kentucky have been enforced.

The Act of March 21, 1906, by its first section, makes it lawful for any number of persons to "combine, unite or pool any or all of the crops of wheat, tobacco, corn, oats, hay, or other farm products raised by them, * * * in order or for the purpose of obtaining a greater or higher price therefor than they might or could obtain or receive by selling said crops separately or individually."

The fourth section of this Act is as follows:

"Whereas, many persons of this Commonwealth now desire to combine their respective crops of tobacco, wheat, corn, oats, hay and other farm products, an emergency is now declared to exist which requires that this act should, and it shall, take effect from and after its passage and approval by the Governor."

The Act amending this Act, approved March 13, 1908, imposed a penalty for the violation of a pooling agreement, such penalty to be imposed not only upon the pooler who should violate his contract but upon any person who should knowingly purchase the pooled crop. The second section of this Act is as follows:

"Whereas, many crops of tobacco and other products have been combined and pooled in this State, under contract and agreement entered into for the purposes set out in the above section, an emergency is now declared to exist, which requires that this Act should and it shall take effect from and after its passage and approval by the Governor."

This last Act has been the subject of construction in a number of cases in this court. We need only refer to the following:

O'Bannon v. Commonwealth, 113 S. W., 907; Commonwealth v. Hodges, 137 Ky., 233; Collins v. Commonwealth, 141 Ky., 565.

A reading of these cases, as well as the pioneer case of Owen County Burley Tobacco Society v. Brumback, 128 Ky., 137, will show beyond controversy what is known of all men in Kentucky—that the fourth section of the Act of 1906, which we have above quoted, and the second section of the Act of March 13, 1908, which we have above quoted, are true; that an emergency did exist in reference to the first of these acts, because of the desire of many persons in the Commonwealth to combine their respective crops; and that an emergency did exist in reference to the Act of March 13, 1908, because many crops of tobacco and other products had been combined and pooled in this State.

It is a significant fact that not a single indictment or a single

penal action has ever been brought against a combination having for its purpose the pooling of agricultural products for the purpose of obtaining a greater price therefor; while on the other hand, numerous prosecutions, by way of indictment or penal action, have been instituted by the Commonwealth against combinations where the article disposed of was one of manufacture.

We need only to ask the court to recollect a number of cases brought to this court, of indictments and penal actions against the International Harvester Company of America, the American Tobacco Company and the Good Roads Machinery Company. Indeed, we may confidently assert that the law of supply and demand, the economic laws of trade, have been left to govern persons dealing in agricultural products in Kentucky, whereas, as to those dealing in manufactured products, effort has been made by the Commonwealth to restrict their price to what was—
 325 not according to any certain measure, but simply by what a jury might determine—a price neither higher nor lower than their value.

It is to be remembered that the Fourteenth Amendment is not directed simply against State law. In this it is unlike that provision in the Constitution of the United States which prohibits a State from passing any law impairing the obligation of contracts; for the Fourteenth Amendment provides that no State shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the laws.

This is a prohibition against State action of any kind which produces the result forbidden.

In *Henderson v. Mayor*, 92 U. S. 259, the Supreme Court of the United States condemned a law of the State of New York, not simply upon its language but upon its effect. Mr. Justice Miller saying, at p. 268:

"In whatever language a statute may be framed its purpose must be determined by its natural and reasonable effect."

So in *Ex parte Virginia*, 100 U. S. 339, the court said, at p. 346:

"We have said the prohibitions of the Fourteenth Amendment are addressed to the States. They are, 'No State shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States, * * * nor deny to any person within its jurisdiction the equal protection of the laws.' They have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that ac-
 326 tion may be taken. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provisions, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates

the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it."

Again, in *Soon Hing v. Crowley*, 113 U. S. 703, the court, in upholding a certain ordinance of the city of San Francisco, said: (Page 710.)

"The principal objection, however, of the petitioner to the ordinance in question is founded upon the supposed hostile motives of the supervisors in passing it. The petition alleges that it was adopted owing to a feeling of antipathy and hatred prevailing in the city and county of San Francisco against the subjects of the Emperor of China resident therein, and for the purpose of compelling those engaged in the laundry business to abandon their lawful vocation and residence there, and not for any sanitary, police, or other legitimate purpose. There is nothing, however, in the language of the ordinance, or in the record of its enactment, which in any respect tends to sustain this allegation. And the rule is general with reference to the enactments of all legislative bodies that the courts can not inquire into the motives of the legislators in passing them, except as they may be disclosed on the face of the acts, or inferable from their operation, considered with reference to the condition of the country and existing legislation. The motives of the legislators, considered as the purposes they had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments. Their motives, considered as the moral inducements for their votes, will vary with the different members of the legislative body. The diverse character of such motives, and the impossibility of penetrating into the hearts of men and ascertaining the truth, precludes all such inquiries as impracticable and futile. And in the present case, even if the motives of the supervisors were as alleged, the ordinance would not be thereby changed from a legitimate police regulation, unless in its enforcement it is made to operate only against the class mentioned; and of this there is no pretence."

To the contrary, in *Yick Wo v. Hopkins*, 118 U. S. 356, the court, in condemning another ordinance, said (p. 373):

"This conclusion, and the reasoning on which it is based, are deductions from the face of the ordinance, as to its necessary tendency and ultimate actual operation. In the present cases we are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of, as tried merely by the opportunities which their terms afford, of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that, whatever may have been the intent of the ordinances as adopted, they are applied

by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States."

328 We respectfully submit that this court can not shut its eyes to facts which are known of all men; which are apparent upon the face of legislative enactments and the records of this court; and that these facts show that the Acts of March, 1906, and March, 1908, and the conduct of the prosecuting officers of the State thereunder, have produced a discrimination against the appellant and others likewise situated, which is a denial of the equal protection of the laws.

We therefore submit that to require, in fact, the vendors of manufactured products to fix a price upon them at the peril of being compelled to show to a jury that such price is neither above nor below that which the jury shall determine to be a reasonable value, and to allow those selling agricultural products to fix a price, without fear of challenge, is practically the same as if the law allowed the one class to combine to obtain a greater price, and prohibited the same liberty to the other class.

Let us indulge in a simple illustration: By reason of an unusually severe season a large part of the winter wheat crop of the United States has been killed. The result is sure to be that the wheat crop of the United States for the year 1912 will be short. The spring wheat will not be sufficient to make up the deficit. Immediately wheat has risen in the market. The man who has spring wheat for sale will get more for it—not because it will cost him any more to raise it; not because, intrinsically, it is worth more this year than last year, but simply because persons who would buy winter wheat will not be able to get it. No one will think of complaining

329 if the owner of a crop of spring wheat shall charge more for what he raises than he would if there were an abundance of winter wheat. And yet, suppose that by reason of some disaster—for instance, the burning of warehouses containing a large part of a manufactured product—there should be a scarcity of this article: under the administration of our anti-trust laws the owner of such manufactured product could charge no more for it by reason of these circumstances. He would be compelled to fix his price by some past standard, and could only increase it if he could show that the cost to him of his small quantity remaining was greater than the cost at some past period.

We submit, in conclusion, that the anti-trust laws of Kentucky, as framed and enforced, allow full play to all economic conditions in reference to agricultural products, at the same time denying the application of such economic principles to manufactured products.

We submit that judging either from the letter of our anti-trust laws, or their practical enforcement, the State of Kentucky does deny to persons in the situation of the appellant the equal protection of the

laws, and that this judgment should be reversed with directions to dismiss the petition.

Respectfully,

ARTHUR M. RUTLEDGE,
HUMPHREY & HUMPHREY,
Attorneys for Appellant.

FAIRLEIGH, STRAUS & FAIRLEIGH,
Of Counsel.

330 Afterwards at a Court of Appeals held as aforesaid on the 26th day of April, 1912, the following order was entered:—

INTERNATIONAL HARVESTER CO.

vs.

COMMONWEALTH OF KY.,

Bullitt,

Came the appellee by counsel and filed a response to the petition for rehearing of appellant herein.

The response filed by the foregoing order is in words and figures following, to-wit:—

On Appeal from Bullitt Circuit Court.

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Appellant,

v.

COMMONWEALTH OF KENTUCKY, Appellee.

Court of Appeals of Kentucky.

Response by Appellee to Petition for Rehearing by Appellant.

May it please the Court:

Ordinarily we would not think it necessary to respond to petition for rehearing filed by appellant, because the matters therein referred to have been thoroughly discussed in briefs heretofore filed, and in the opinion of this court in this case, but we understand that if appellant is unsuccessful in obtaining a rehearing it will prosecute a writ of error to the Supreme Court of the United States, and we feel

a response should be filed in order that no misapprehension

331 may be indulged in as to the attitude of the Commonwealth. This prosecution covers a period beginning July 21, 1910, and ending July 21, 1911. The opinion in this case was delivered March 16, 1912. In the opinion reference is made to the case of "Owen County Burley Tobacco Society v. Brumback, 128 Ky., 137, decided February 7, 1908, and case of Commonwealth v. International Harvester Company, 131 Ky., 551, decided January 26, 1909.

Referring to these two cases, this court in its opinion, says:

"It may be said, that since these two cases were decided, there is

no law in this State which forbids the existence of trusts, pools or combinations, or that prohibits them from fixing and maintaining the price or prices of their products or commodities, so long as they are not sold for more, nor less, than their real or market value. Obviously, the real value of any marketable commodity is its market value under fair competition, and under normal market conditions. It goes without saying, however, that such value would increase or decrease, according to the increase or decrease in the market value of the ingredients, or the increase or lowering of the price of the labor, which produces it."

This court in same opinion quotes with approval the following from the case of *International Harvester — of America v. Commonwealth*, 137 Ky. 648, decided March 15, 1910:

"Therefore, it is not enough under a prosecution under our statute to show that there has been a combination among producers of their products or plants. * * * Nor is it enough to show in addition, and no more, that the price of the commodity was subsequently advanced." * * *

From these quotations it is so plain that any one can not be mistaken therein, that under the laws of Kentucky prior to the institution of this action, and upon which this action was based, it was no offense to form a pool, trust or combination for the purpose of getting a higher price for the commodity or article pooled, or concerning which the combination or trust was formed. And there has been in the State of Kentucky no prosecution against appellant or any other trust or combination since the act of May 20, 1890, was amended by the act of March 21, 1906, having for its basis, alone, the fact that the defendant was getting a higher price for the commodity or article it sold than before the combination, in fact, if the petition was filed with such allegations for its basis a demurrer would be sustained to it.

Every prosecution instituted has been based upon the allegations that a trust, pool, or combination had been formed for the purpose of increasing the price of the article or commodity above its real or market value, and this purpose had been carried out in the county in which the prosecution was instituted by selling the article or commodity above its real or market value. And this law applies with equal force to any combination whether it be a combination of farmers or of manufacturers.

Trusts and pools and combinations may be formed for the purpose of selling manufactured articles or agricultural products at a higher price than before the combination and carrying out that purpose by actually selling at a higher price. The law only prohibits a trust or combination formed for the purpose of selling the manufactured articles or agricultural products at a price in excess of their real or market value. This is all the laws of Kentucky prohibit. And the enactment of the General Assembly of Kentucky referred to in the petition for rehearing, is carrying out provisions of section 198 of the Constitution of the States, which is as follows:

"It shall be the duty of the General Assembly from time to time,

as necessity may require, to enact such laws as may be necessary to prevent all trusts, pools, combinations or other organizations, from combining to depreciate below its real value any article, or to enhance the cost of any article above its real value."

In appellant's petition for rehearing is the following language:

"It is a significant fact that not a single indictment or a single penal action has ever been brought against a combination having for its purpose the pooling of agricultural products for the purpose of obtaining a greater price therefor; while on the other hand, numerous prosecutions by way of indictment or penal action, have been instituted by the Commonwealth against combinations where the article disposed of was one of manufacture."

It is true that no prosecution has been instituted against any combination formed for the purpose of pooling agricultural products to obtain a greater price therefor; it is also true that since the act March 26, 1906, no prosecution has been instituted against any combination where the article disposed of was one of manufacture, where the sole purpose of the combination was to obtain a greater price for the article. If above quotation is meant to charge that prosecutions have been instituted by the Commonwealth against a combination

where the article disposed of was one of manufacture and 334 where the sole purpose of the combination was to obtain a greater price for the manufactured article, then we most emphatically deny the statement.

It is not known to all men or to any men (although asserted by some men) that the records of this court or the fact show that the acts, March 1906-1908, and the conduct of prosecuting officers of the State thereunder have produced discrimination against the appellant and others likewise situated.

On the contrary the records of this case show that the appellant has in deliberate violation of Section 198 of the Constitution and the act of March 24, 1890, as amended by act March 26, 1906, persistently continued a party to a combination to sell the articles it controlled above their market value and its only ground of complaint, is, that it is not permitted to violate a constitutional provision and the laws enacted in pursuance thereof, which provision and laws apply to all, individual or corporation; foreign or domestic.

Appellant has been repeatedly called upon by the officers of the State, whose duty it is to uphold this constitutional provision and the laws enacted in pursuance thereof, to produce evidence that any combination having for its purpose the pooling of agricultural products has been guilty of violating the laws of the State, with the assurance that such combination would be prosecuted, and up to this good hour no response has been made by the appellant to this invitation and the only conclusion to be drawn therefrom is that it is seeking to 335 divert attention from its nefarious conduct by falsely accusing others of the same offense. If appellant's accusation had any foundation (which it has not) it simply amounts to this:

That it is violating the laws of Kentucky and intends to continue to do so, because others who have been guilty of a similar offense

have not been punished. Such a position is not entitled to any consideration from a legal or moral standpoint.

The Kentucky cases quoted by appellant in its petition for rehearing in no way bear out its contention that appellant or those likewise situated are discriminated against in favor of the growers of agricultural products; nor is there the slightest intimation in any of the cases that discrimination should be made between those engaged in the manufacture or sale of manufactured articles and those engaged in growing agricultural products. All of the cases show that all parties are given the protection of equal laws, and the same prohibitions apply to all.

The case of *Yick Wo v. Hopkins*, 118 U. S., referred to in appellants' petition for rehearing has no application to the facts disclosed by this record. In the *Yick Wo* case it appears that by an ordinance of the Board of Supervisors of the county in which the city of San Francisco, California, is situated, it was provided, that it was unlawful for any person to carry on a laundry within the corporate limits of the city and the county of San Francisco, without having first obtained consent of the Board of Supervisors, except the same be located in a brick or stone building.

It appears from the admitted facts of the record that Yick Wo was a native of China, and had been engaged in the laundry business in the same premises and building for twenty-two years. That he had complied with all the necessary regulations both as to the sanitary condition of his premises and protection against fire. That in various other places similarly conducted and which were operated by Chinamen the right to conduct a laundry business had been refused, while those who were conducting a similar business, who were not Chinamen were under the same conditions permitted to continue their business. The court held this was a discrimination against the Chinese, which was prohibited by the fourteenth amendment to the Constitution of the United States.

In the case at bar it is shown that appellant violated a general law, which applied to all persons, without any discrimination being vested in any officer to limit or restrain the law.

There is not a line of proof in the record showing that appellant has been discriminated against. There is not a line of proof in the record which shows that any other person, individual or corporation has been permitted to violate the law for which appellant has been prosecuted, without being prosecuted. Therefore the statements in the petition for rehearing to the effect that there is discrimination, so far as the record shows, has no other basis than the imagination of the appellant's agents.

We feel that the petition should be promptly overruled.

Respectfully submitted,

JAMES GARNETT,

Attorney General;

CARROLL & CARROLL,

T. C. CARROLL,

Attorneys for Appellee.

FRANK E. DAUGHERTY,

J. F. COMBS,

Of Counsel.

337 Afterwards, to wit, on the 9th day of May, 1912, counsel for appellant and plaintiff in error, The International Harvester Company of America, filed in the Clerk's office of the Court of Appeals of Kentucky its Assignment of Errors, which is in words and figures following, to wit:

Supreme Court of the United States.

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Plaintiff
in Error,

v.

COMMONWEALTH OF KENTUCKY, Defendant in Error.

Assignment of Errors.

The Plaintiff in Error, the International Harvester Company of America, assigns the following errors as having been committed herein:

1. The Court erred in failing to hold that the Act of the Legislature of Kentucky, approved March 21, 1906, operated so as to allow the persons therein described to enter into combinations which were forbidden to persons not therein described; and in failing to hold that there was thereby produced an unjust and unreasonable discrimination against the Plaintiff in Error and others similarly situated; and thereby the Plaintiff in Error was denied the equal protection of the laws as guaranteed under the Fourteenth Amendment to the Constitution of the United States.

2. The Court erred in holding that the Act of the Legislature of Kentucky of May 20, 1890; the Act of March 21, 1906, and the Constitution of the State of Kentucky, when read together,

338 had the effect of making it a penal offense against the laws of the State of Kentucky for the Plaintiff in Error to sell the product of its manufacture at a price greater or less than its reasonable value, when there was no provision of the law fixing any standard of such reasonable value but the jury in each individual case was left to determine this question. Such a penal statute is so uncertain, indefinite and unreasonable as, if enforced, would, and as enforced by the judgment herein, did deprive the Plaintiff in Error of its property without due process of law, and deny to it the equal protection of the laws, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

3. The Court erred in failing to hold that the purpose and effect, and the manner of enforcement by the authorities of the State of Kentucky, of the said three provisions of the law of the State of Kentucky, mentioned in the second assignment of error, are discriminatory as against the Plaintiff in Error and others situated as is Plaintiff in Error, and in favor of those persons who are mentioned in the said Act of March 21, 1906, and the Plaintiff in Error has thereby been, and by the judgment herein rendered has been, denied the equal protection of the laws, and deprived of its prop-

erty without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

4. The Court erred in failing to hold that the Statutes of Kentucky under which this action is prosecuted, namely the Acts of May 20, 1890 and March 21, 1906, as construed and applied by the Court of Appeals of Kentucky, are in conflict with the Constitution of the United States, and particularly with the fourteenth amendment thereof, for the following reasons among others, namely: that the said Statutes operate to deny to the defendant the equal protection of the law and to deprive this defendant of its property without due process of law.

5. The court otherwise erred in its judgment herein.

A. M. RUTLEDGE,

ALEX. P. HUMPHREY,

For Plff in Error.

Filed May 9, 1912.

ROBT L. GREENE, C. C. A.

On the same day, to-wit, May 9, 1912, the appellant by counsel filed in the Clerk's office of the Court of Appeals of Kentucky a Writ of Error allowed by the Chief Justice of said court, which is returned herewith and attached hereto and is in words and figures following, to-wit:

340 UNITED STATES OF AMERICA,

Eastern District of Kentucky, ss:

The President of the United States of America to the Honorable the Judges of the Court of Appeals of the State of Kentucky, Greeting:

Because in the records and proceedings as also in the rendition of the judgment of a plea which is in said Court of Appeals of Kentucky before you in a suit between Commonwealth of Kentucky and International Harvester Company of America, wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution of the United States and the decision was in favor of such their validity; a manifest error has happened to the great damage of the said International Harvester Company of America we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 7th day of June, 1912, in the said Supreme Court to be then and there held that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglas White, Chief Justice of the said Supreme Court, the 9th day of May, the year of our Lord Nineteen Hundred and Twelve.

[Seal United States of America Eastern Kty. Dist. Court.]

J. W. MENZIES,
Clerk of the District Court,
East Dist. Ky.,
 By MARY SCOTTOW, D. C.

Allowed by
 J. P. HOBSON,
Chief Justice of Court of
Appeals of Kentucky.

[Endorsed:] Filed May 9, 1912. Rob't L. Greene, C. C. A.

341 On the same day, to-wit, May 9, 1912, the appellant and plaintiff in error, The International Harvester Company, executed a Writ of Error and with the Maryland Casualty Company as surety which was approved by the Chief Justice of the Court of Appeals of Kentucky and is in words and figures following, to-wit:

342 Court of Appeals of Kentucky.

INTERNATIONAL HARVESTER COMPANY OF AMERICA, Plaintiff in Error,

v.

COMMONWEALTH OF KENTUCKY, Defendant in Error.

Know all men by these presents: That we, the International Harvester Company as Principal, and Maryland Casualty Company, as surety, are held and firmly bound unto the Commonwealth of Kentucky in the sum of Seventy five hundred dollars for payment of which well and truly to be made, we, the International Harvester Company of America, Principal, and Maryland Casualty Company, as surety, bind ourselves jointly and severally firmly by these presents.

Witness our hands and seals this 9 day of May, 1912.

The condition of this obligation is such that whereas the said Commonwealth of Kentucky instituted a certain action against the International Harvester Company of America, claiming a penalty of Five Thousand (\$5,000.00) Dollars, and judgment was rendered accordingly in the Bullitt Circuit Court, and subsequently an appeal was taken from said judgment to the Court of Appeals of Kentucky, which affirmed the same; and, whereas, the said International Harvester Company of America has sued out a writ of error from the Supreme Court of the United States to reverse said judgment of the Court of Appeals of Kentucky,

Now, therefore, if the above bounden International Harvester Company of America shall prosecute said writ of error to effect and

answer the judgment, all damages and costs, if it fail to make good
this appeal, then this obligation shall be void, otherwise to
343 remain in full force and effect.

INTERNATIONAL HARVESTER COMPANY OF
AMERICA.

By ALEX P. HUMPHREY, *Att'y.*
MARYLAND CASUALTY COMPANY.

By R. L. GREENE, *Attorney-in-fact.*

The above and foregoing bond is approved this May 9, 1912.

J. P. HOBSON,

Chief Justice of the Court of Appeals of Kentucky.

Filed May 9, 1912.

ROBT L. GREENE, C. C. A.

344 On the same day, to-wit, May 9, 1912, the Chief Justice
of the Court of Appeals of Kentucky issued a Citation, which
is attached hereto and returned herewith.

345 UNITED STATES OF AMERICA, *ss:*

To Commonwealth of Kentucky, Greeting:

You are hereby cited and admonished to be and appear at the
Supreme Court of the United States, to be holden at Washington
thirty (30) days after the date hereof, pursuant to a writ of error
filed in the Clerk's Office of the Court of Appeals of Kentucky,
wherein International Harvester Company of America is Plaintiff
in Error, and you are Defendant in Error, to show cause, if any
there be, why the judgment rendered against the Plaintiff in Error,
as in the said Writ of Error mentioned, should not be corrected and
why speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. P. Hobson, Chief Justice of the Court
of Appeals of Kentucky, this 9 day of May, 1912.

J. P. HOBSON,

Chief Justice of the Court of Appeals of Kentucky.

Citation accepted for the Commonwealth of Kentucky, Defendant
in Error, this 30 day of May, 1912

JAMES GARNETT,

Attorney General of Commonwealth of Ky.

[Endorsed:] Filed May 9, 1912. Rob't L. Greene, C. C. A.

[Endorsed:] Filed May 9, 1912. Rob't L. Greene, C. C. A.

346 COMMONWEALTH OF KENTUCKY.

Court of Appeals, ss:

In obedience to the commands of the attached Writ of Error, I
hereby transmit to the Supreme Court of the United States a com-
plete transcript of the record with all things touching the same, as

appears from the records and files of my office, in the case of International Harvester Company of America, Appellant and Plaintiff in Error, against The Commonwealth of Kentucky, Appellee and Defendant in Error.

In testimony whereof I have hereunto set my hand and affixed the seal of my office. Done at Frankfort, Kentucky, on this the 25th day of May, A. D., 1912.

[Seal Court of Appeals, Kentucky.]

ROBT L. GREENE,

Clerk Court of Appeals of Kentucky.

Fee for Transcript \$87.50.

Endorsed on cover: File No. 23,254. Kentucky Court of Appeals. Term No. 679. International Harvester Company of America, plaintiff in error, vs. Commonwealth of Kentucky. Filed June 13, 1912. File No. 23,254.